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THE ROLE OF THE CITY COUNCIL IN COMMUNITY POLICY-MAKING*

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This paper provides a preliminary report on the role of the city council and of councilmen in four Michigan council-manager cities having nonpartisan elections and population ranges between 50,000 and 70,000. Data were gathered through statistical compilations and through a large number of loosely structured interviews with councilmen, city officials, newspapermen, officers of community organizations, businessmen, and labor leaders. I have here used the assumptions of the early supporters of the council-manager plan as hypotheses for testing.

I

The materials concerning the council-manager plan that were published during the years immediately following the first use of the plan contain many recurring themes. One of the most persistent is that of the analogy between the corporate board of directors and the city council. But the analogy seemed always to assume that corporate boards actually served as bodies for policy innovation and leadership. The relationships between, and roles of, the board of directors and the bureaucracy of large corporations has since been studied in some detail by social scientists and the distinction between the formal and informal roles of the two have been dilineated. But realistic interpretation of the model did not discourage the continued use of the analogy in its original form. Employment of the analogy for propaganda purposes among businessmen was, and remains, an effective ploy. But the literal acceptance of it by political scientists who are supposed to explain the institutions and processes of politics is another matter, and one that is not easily justified.

Recently, some attention has been paid to the role of the city manager as a policy leader and innovator.[1] Studies relating to this matter must necessarily reconsider the role of the council and of other institutions, such as interest groups and referendums, in the policy-making process. This type of research is badly needed if we are to develop a theory of the political process. It might be mentioned that almost no empirical studies of city councils at work now exist.

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* These findings are a part of a comparative study in the political process at the municipal level being conducted by Oliver P. Williams and myself. Because of the tentative nature of these findings, and because they will be placed in a more satisfactory theoretical context in a pending monograph, I request that this material not be reproduced in its present form. I should like to thank Mr. Williams for permission to make use of data from our joint project, and to give proper credit for the hard work done in data gathering by our graduate assistants, Kenneth Ver Burg and John Hooyer.

There are some worthwhile reports of participant observers relating to councils, but virtually nothing in the way of systematic analysis.[2]

II

Historically, popular assemblies have performed the functions of debate, criticism and investigation. To this might be added, especially so far as the Anglo-American tradition is concerned, the right to approve the budget, and somewhat later, to give legitimation to the law on behalf of the citizenry. Assemblies played important, although essentially passive, roles in policy formulation. But under the colonial-frontier influence, American legislative bodies, even before the Revolution, began to develop a positive voice in decision-making. With the fall from favor of executives during that war, the new state legislatures and city councils expanded upon this new role. The frontier influence of egalitarianism encouraged the trend and for much of the nineteenth century executives were distrusted and given a secondary role in government, even in their traditional area of responsibility, policy innovation and leadership. Key decision-making, under the circumstances, did not pass to a professional bureaucracy, because there was virtually none. In some cases, it passed to interest groups, especially in the business community, who channeled their wishes through the political institutions. (The latter were generally better organized in nineteenth century America than they are today). Some of it passed to the leaders of political machines who themselves served as innovators and leaders as well as brokers. Some of it passed to council committees, continuing a tradition from Colonial days.

In the reform movement which began toward the end of the century, the frontier ideology of legislative supremacy was wedded with the business idelogy of efficient administration. After some experimentation, the movement settled upon the council-manager plan as the best mechanism to further its goals at the municipal level. The basis of the manager plan was to be found in the assignment of administrative reponsibility to a professional, politically neutral, full-time manager, and of policy-making to a council of laymen.[3]

The following seem to have been the major assumptions concerning the role of the council that were made by the early advocates of the council-manager plan:

1. The most able, most "civic-minded" persons in the community should be induced to serve on the council.

2. These people should follow the Burkian principle and vote according to their conscience and their conviction as to what is "best" for "the whole community," rather than to represent particular interests in the community. They should be community leaders before election and municipal policy-makers while serving on the council.

3. Councilmen should be chosen on the basis of individual ability and commitment to the above principles. Hence, elections should be on a nonpartisan ballot and neither national parties, nor collective campaigning, nor councilmanic voting blocs should play any role in the process of selection. The council should serve as a "board of directors" for the municipal corporation and as such should not be involved in what is traditionally regarded as "politics" at all.

4. The council should be the principal, almost the exclusive, institution for policy-making, but it should not either collectively or through individual members, seek to influence the manager's appointments, to insinuate itself into relationships between the manager and his subordinates, or into details of administration. Councilmen, as members of the board of directors, should deal with municipal agencies and personnel only through the manager.

5. The council should choose the manager and might dismiss him by majority vote. In judging candidates, it should use only the criteria of administrative ability and knowledge of municipal government.

These several propositions concerning the model role for the council will be tested below in four cities which are here referred to, in order to protect the anonymity of informants, as Alpha, Beta, Gamma, and Delta. The role of the city manager and his administration in policy formulation and leadership has already been reported on for the first three of these cities.[4] A brief description of each city is necessary before an analysis is presented.

III

Alpha, at the time of our study, was governed by a seven-man council elected in a general election every two years. There was no primary to narrow the field. The person receiving the highest vote became mayor and the second highest vice-mayor. Elections were held in November of odd years and did not coincide with elections for state or national offices.

Of the four cities, Alpha politics showed the greatest degree of organization and structure. The most effective political group was a self-selected, self-perpetuating organization of prominent businessmen which recruited, endorsed, and financed the campaigns for a slate of candidates. It will be referred to here as the Citizen's Committee. The candidates of the committee were leading business and professional men. Some were officers in the city's largest firms. Most, but not all, of them were Republicans in national politics. All of the candidates endorsed during the period studied lived in four precincts. These were in the most prestigeful areas of the city. Financial support given by the Committee to endorsees was substantial, amounting to as much as $15,000 in a single campaign. The objectives of this organization were general and did not constitute a combining of special interests of the members. Generally speaking, the orientation was consistent with traditional civic reform ideals.

Alpha was unique among the cities in that an organized opposition existed, albeit one lacking the continuity of the Citizen's Committee. During the ten-year period, two oppsition states were organized.

Beta, was governed by a nine-man council. There was a primary in which two residents of each of eight wards were nominated by their fellow residents. In the general election, held in November of odd years, the whole city voted on all of the pairs chosen in the primary. The mayor, who served as a member of the Council, was both nominated and elected on a city-wide basis.

Like Alpha, Beta had a "Citizen's Committee" which performed a recruiting and endorsing function. But beyond these superficial similarities the actual performances of the two groups stood in sharp contrast to each other. While the citizen's group in Alpha was select and self-selected, the Beta group was formally organized, with open membership, and established rules of procedure. The Beta group membership, therefore, did not include as prestigeful a segment of the community, and its candidates were not as likely to be as important in the city's economic and social life. While the Alpha committee attempted, by sponsoring only a bare majority of candidates, to avoid the appearance of dominating the city council completely, the Beta group sought the same goal by recruiting at least two acceptable candidates for every position in contest. Partially for this reason, the Committee's endorsement was not prized by many of the candidates, for frequently the general election found two endorsees opposing each other. The last major difference between the Alpha and Beta groups was that the latter's campaign effort was confined to an election-eve newspaper advertisement. For this reason, campaign support was extended in hundreds of thousands of dollars, as was the practice in Alpha. In fact, virtually no money was spent by anyone in Beta municipal election campaigns.

In addition to the differences, there were several similarities between the Alpha and Beta "citizen's committees." Both groups were closely wedded to the ideals of the civic reform movement -- efficiency, economy, nonpartisanship, and integrated administration. In both cities, the committees enjoyed a great deal of success, measured in terms of the number of endorsees elected. In Beta, the committee successfully supported seven out of nine candidates in four elections. In another, seven out of nine of the committee's endorsees were elected. As the committee's campaign efforts were minimal, its success was probably a function of the degree to which its outlook reflected the dominant views in the community. If this assumption is correct, we would conclude that its influence was felt mainly in convincing reluctant individuals to become candidates for the council. Beta's Citizen's Committee was a loosely knit organization, but it enjoyed the advantage of monopoly; there was no other organized political group in local electoral politics.

Gamma had a system of election laws similar to that of Alpha. The seven-man commission was elected at large. There was a primary in which the field was reduced to twice the number of offices to be filled. Terms were for four years, and three and four councilmen were chosen every two years. Municipal elections coincided with those for state and national offices. The mayor was chosen by the councilmen from their own membership and the office was customarily rotated every two years among the senior members.

There was no organized, consistent recruiting, and no campaign group operating as continuously as did those described for Alpha and Beta. The Chamber of Commerce and organized labor supported slates sporadically, and both their efforts met with some success. The latter provided chiefly behind-the-scenes, word-of-mouth support. The Chamber and allied businessmen, on the other hand, supplied modest campaign funds to their endorsees, sometimes through a thinly disguised "front" organization. On two occasions, three incumbent councilmen banded together as a slate with the support of the latter. In thus accepting joint responsibility, they furnished the voters of Gamma in two elections with better-structured contests than existed in Beta in any time.

If we were to scale the three cities mentioned thus far for the degree to which voters could identify blocs of associated candidates, the order from top to bottom would be Alpha, Gamma, and Beta. On another scale, however, measuring the degree to which candidate recruitment was organized, Gamma would rate a poor third.

The greater Gamma metropolitan area had several peculiarities which should be mentioned: there were three satellite cities which syphoned off the economic extremes in the population. Many low-income persons, and especially low-income Negroes, lived in an independent industrial suburb, and the wealthiest citizens lived in two independent residential suburbs. The economic span of the community was thus somewhat truncated.

Delta was the only city in our study which had an unmodified ward system. There were nine wards from which councilmen were both nominated in a primary and elected in a general election. Elections were held in odd-numbered years, with the primary in February and the general election coinciding with the state-wide spring election in April. A mayor was chosen on a city-wide basis, but the post was legally a weak one. He could vote at council meetings only in case of a tie. During the period of our study he did not attempt to serve as a policy leader.

One major organized group engaged in electoral politics in Delta--the City Employees' Union. The Union recruited candidates and financed their campaigns. It contested only in those wards where chances for success seemed good, and was totally inactive in the two wealthiest and most Republican wards. In other wards, it mounted campaigns against councilmen who voted in a manner regarded as inimical to the Union. Efforts of the group were largely successful. It received financial support from its own treasury as well as from some local businessmen. The Union's investment in gaining control of two seats in one recent election was estimated variously between $3,000 to $12,000 by informants.

Delta was not reported on in my Public Administration Review article because it had not yet been investigated. What we found there differed radically from the highly consistent pattern found in the other three cities so far as the role of the manager was concerned. Delta, though a manager city for over twenty-five years, had had only one manager who was a non-resident at the time of his selection--and that exception proved rather short-lived, for when the manager sought to exercise policy leadership he was ousted. The manager during the period of our study was formerly a ward councilman. He was neither an administrator nor a policy leader. Informants could think of no case in which he had served in either an innovator or leadership role in policy-making.

The city had German (Protestant), Polish (Catholic), and French-Canadian (Catholic) ethnic groups that were politically significant, and ward boundaries corresponded closely to ethnic lines. Church lay groups were important as centers for campaigning and as sources of campaign workers. Two middle-class wards had no definite ethnic orientation. The Negro population was largely concentrated in one ward, but was not politically effective. The business community, somewhat fearful of the potential power of the City Employees' Union (CEU) and of its alliance with AFL-CIO locals, tended to avoid taking part in political matters (the Chamber of Commerce was totally apolitical). The city assessor, a former officer in the Republican county organization, often served as a liaison between the CEU leaders and businessmen. As such, he was an important policy leader, as were some of the other department heads. The most powerful leader in policy-making

(though not an innovator) was the city zoning administrator, who had formerly been the business agent for the CEU. Delta, in a great many ways, stood in contrast to the other three cities studied.

IV

A major goal of early council-manager plan supporters was to raise the caliber of councilmen. They sought to get the "best", most qualified people in the city to serve on the governing body. Being persons of outstanding ability, councilmen were expected to function as both innovators and leaders in the policy formulation process--this is clear even though the literature of the day did not distinguish the two roles carefully.[5] The emphasis of the movement was upon professional administration and upon policies aimed at "the good of all." Just what these policies were to be was never made clear. Perhaps the reformers had in mind something like a grass roots application of Rousseau's "general will." More likely they thought in terms of the boosterism and "civic progress" goals of the business community, of the same goals which came to be associated with chambers of commerce. In any case, the good councilman would be one who understood and believed in these goals. The emphasis upon professional administration would seem to imply that the most qualified men would be those having experience in successful bureaucratic organizations, and the larger manufacturing and business firms would be the most likely source for such candidates.

In order to see to what extent persons committed to the goals established by the early supporters of the manager plan--the board of directors types of persons with city-wide rather than parochial special interests--had been chosen in our four cities, a classification was made of all candidates according to their occupation prior to the last election in which each participated. The following categories were used:

Owners and executives of non-retail firms

Owners and executives of retail firms

Professional persons

Salesmen

Clerical and white-collar workers

Laborers

Miscellaneous and Unknown

The executive classification includes all of the principal officers of firms, such as presidents, vice presidents, secretaries, treasurers, managers, and in the case of large firms (1,000 employees and over), such specialized officers as sales managers, production managers, etc. White collar and clerical includes all persons between the executive category and the foreman of the blue collar workers. Laborer includes the blue collar tradesmen, and unskilled workers and

their foremen. The salesman category refers to the real estate and insurance businesses only. Professions include doctors, lawyers, dentists, chiropractors, professors, engineers and public school teachers. Table 1 shows a numerical and percentage profile of the occupational backgrounds of successful candidates for the city elective bodies. Because the total number of individuals involved in these tables is rather small, ad hoc circumstances may effect given categories to some extent. However, other sources of evidence on these cities indicate that the occupational patterns which do occur are not entirely fortuitous.

Table 1 shows that recruitment under nonpartisan elections produces a fairly large representation of occupational groups whose professional lives are likely to involve them in the higher echelons of bureaucracies. The two executive-owner classifications comprise about half the city councilmen. While some of the retail merchants operate comparatively small firms, many of the salesmen and professionals must be added to the category of those having administrative experience. In contrast, the clerical and laboring groups, which have the least opportunity for higher bureaucratic experience, are in a decided minority.

The question may be asked of Table 1, are not the percentages in each of the categories a function of the number of individuals offering their candidacy? Table 2 gives data on the occupational background of all candidates. While unwillingness to run may partially explain the low representation of clerical occupations, the same hardly holds true for laborers. One-fifth of all candidates were from the laboring group and only the retailers showed a greater willingness to run for office. A contrast of Table 1 and Table 2 gives an indication of the comparative fortunes of each occupational category. Non-retail executives comprised approximately 18 per cent of all candidates, but supplied 29 per cent of the winners. By taking the total successful candidates as a percentage of total candidates in each category (Table 3) we can portray this point more graphically. (As the figures within a single city are small, a city by city breakdown is not practical). Professionals and non-retail executives had an even chance of winning election, while the odds were four to one against a working man (though it varied by city, as we shall see).

If the nonpartisan election was designed to encourage an influx of persons with administrative experience by virtue of occupational backgrounds it would appear to have been moderately successful in these four cities. Conservatively, about one-third of the councilmen were in this category. The considerable variation that was to be noted among the cities will be discussed below.

These same tables help us in assessing the degree to which persons of city-wide as opposed neighborhood orientation become elected. Let us scale the occupational categories according to those terms. Non-retail executives and professionals may be placed on one end of the scale because their city interests and daily orbits of involvement are likely to encompass an entire municipality. The laborer, clerk and retail merchant, with their interest in the home or the shop, are placed at the other end of the scale. The sales group does not fit neatly into our scheme. Their places of business and clientele vary. A realtor may be identified with a particular subdivision, a downtown business area, or a city-wide business, depending upon his line of specialty. For this reason we have omitted placing the sales group on our scale.

TABLE 1

OCCUPATIONAL BACKGROUND OF SUCCESSFUL COUNCIL AND MAYORALITY CANDIDATES
(Each election is figured separately in the totals)

	Percentage of Successful Candidates					Number of Successful Candidates			
Occupational Categories	ALPHA	BETA	GAMMA	DELTA	MEAN	ALPHA	BETA	GAMMA	DELTA
Owners and Executives: Non Retail	46	33	24	12	29	16	15	4	6
Owners and Executives: Retail	3	13	29	30	19	1	6	5	15
Professional	26	18	0	22	16	9	8	0	11
Sales	8	11	24	0	11	3	5	4	0
Clerical and White Collar	0	11	11	4	7	0	5	2	2
Labor	8	4	11	30	13	3	2	2	15
Miscellaneous	8	9	0	0	5	3	4	0	0
Unknown	0	0	0	2	--	0	0	0	1
TOTAL*	99	99	99	100	100	35	45	17	50

* Percentages rounded.

TABLE 2

OCCUPATIONAL BACKGROUND OF ALL CANDIDATES
(Each election is figured separately
in the totals)

Occupational Categories	Percentage of all Candidates					Number of all Candidates			
	ALPHA	BETA	GAMMA	DELTA	MEAN	ALPHA	BETA	GAMMA	DELTA
Owners and Executives: Non Retail	30	17	16	11	18	28	22	11	15
Owners and Executives: Retail	10	25	30	21	26	9	31	21	26
Professional	24	12	0	14	12	20	16	0	20
Sales	10	14	15	4	11	8	18	10	6
Clerical and White Collar	1	12	6	10	7	1	11	4	14
Labor	14	16	25	32	22	12	20	17	45
Miscellaneous	7	6	9	2	6	6	8	6	3
Unknown	0	0	0	6	1.5	0	0	0	10
TOTAL*	97	102	101	100	103.5	84	126	69	9

* Percentages rounded

TABLE 3

WINNING CANDIDATES AS A PERCENTAGE OF TOTAL CANDIDATES ACCORDING TO OCCUPATION CATEGORY
(Each election is figured separately in the totals)

Occupational Categories	Total No. of Candidates	Number of Winning Candidates	Percent
Owners and Executives: Non Retail	77	41	53
Owners and Executives: Retail	87	27	31
Professional	56	28	50
Sales	42	12	29
Clerical and White Collar	29	9	31
Labor	91	22	24

TABLE 4

OCCUPATIONAL BREAKDOWN OF CITIZEN COMMITTEE ENDORSEES
(Each election is figured separately in the totals)

Occupational Categories	ALPHA	BETA
Owners and Executives: Non Retail	13	19
Owners and Executives: Retail	1	8
Professional	9	12
Sales	2	9
Clerical and White Collar	0	2
Labor	0	2
Miscellaneous	3	5

As Table 1 shows, there were decided differences in the distribution among occupational categories of the four cities. Comparing Alpha and Delta with respect to our five occupational groups, all but the clerical category show striking contrasts. Indeed, Delta was unique among the cities in the number of successful labor representatives and the dearth of non-retail executives. It was the only city nominating and electing council candidates by ward. (One-half the non-retail executives elected were to the post of mayor, a city-wide office). In Delta, under the ward system, professionals and non-retail executives were infrequently elected. (Table 2). Moreover, and perhaps more important, they seemed not to be attracted by a ward type of politics. On the other hand, retailers and laborers seemed to find ward politics congenial.

If we scale the three communities with city-wide elections according to the degree to which they recruit their leaders from "city-wide" occupations Alpha would rank first, followed by Beta and then Gamma. This is the same order in which these cities rank if they are scaled according to the presence of organized political activity dedicated to the principles of civic reform. The Citizens Committees of Alpha and Beta are active in candidate recruitment while such activity is occasional and sporadic in Gamma. Other evidence indicates that this correlation is not coincidental. Leaders in the citizens groups of Alpha and Beta were interviewed on the subject of qualifications for city office-holding. They were unanimous in stressing the need to find persons interested in city-wide affairs and to exclude individuals who would represent neighborhoods or other segments of the city. Table 4 shows the occupational breakdown of endorsees of these two committees. A definite preference for non-retail executives and professionals is indicated.

What happens if we insert Delta into our correlation of these two scales? Delta undoubtedly ranks at the bottom with regard to commitment to reform movement values. It similarly ranks last with regard to the election of non-retail executives. However, there is a distinctly higher incidence of councilmen elected from the professional group. Here is a case where our broad classifications undoubtedly disguise the characteristics of the individuals involved. Two five-term incumbents, a high school teacher and a retired college teacher, inflate the figures in this category. Among the professional group elected in Delta were lawyers, but only one of these was a man of some standing in a community. He was elected to the office of mayor. The professionals elected in Alpha and Beta, while including a few on the margins of their fields, were generally persons of greater prominence in the community than were those in Delta.

To summarize our observations on the distribution of occupations, it appears that organized civic reform activity increases the representation of occupations of city-wide orientation--the professional and non-retail executive groups. Apparently many civic committee members believed that these groups had less of an "axe to grind" than did others. Significantly, the occupational distribution had a pronounced middle-to upper-middle-class bias.

It is, of course, not necessary to have industrial workers sitting on the council in order to have industrial worker representation. This raises the question of whether this group was represented by persons in other categories. To what extent did organized labor seek representation on the councils? Concerted

political activity on behalf of labor-endorsed candidates was attempted at least once in each of the four cities. In Alpha and Beta, the efforts failed miserably. This was especially true in Alpha where a real attempt (the investment of several thousand dollars) was made in 1948. In Gamma attempts have met with sporadic success with the council usually having one to three members with identifiable labor support. However, labor political activity is well organized and consistently successful only in Delta. Thus the presence of organized political activity dedicated to reform principles, plus the presence of at-large elections appears to lead to a dearth of labor (and clerical white collar) representation.

V

It is difficult to measure commitment to the Burkian principle in precise terms, but on the basis of our interviewing, we believe we have found certain patterns of councilmanic images of their own roles. [illegible]. If we were to scale our four communities according to councilmanic commitment to the Burkian principle, Alpha would rate first, Delta last, with the other two somewhere between. The Alpha Citizens Committee will not endorse (or reendorse) candidates who seem to seek to protect a particular interest or section of the city, and the Committee is immensely powerful in its influence upon the outcome of councilmanic elections. One of our most competent informants rated two of the Committee endorsees as delegates representing the business community, but certainly we found more definite examples of the delegate type in our other three cities. The prevailing geist in Alpha was one in which the business leaders were expected to serve the community's broad interest in a spirit of rather dignified boosterism and in the tradition of noblesse oblige.

Delta, in contrast, had a tradition of government centering around the politics of ethnicity and of service not to a model image of a total community, but to the individual. Almost all of the councilmen fitted into the category of delegates, persons representing the interests of their wards and the ethnic or social groups which they contained. There were only three important exceptions during the ten-year period of our study: A high school teacher representing a middle-class ward sought to play the role of trustee of the "public interest." He did this by advocating policies of traditional reform and of the sort of things that were endorsed by the state league of municipalities. Thus, he favored at-large elections, the hiring of a professional, non-resident manager, and a vigorous policy of annexation of suburban township areas. He was dedicated to an image of the role of a councilman that was alien to nearly all of his colleagues and as a result, he was a constant source of friction on the council, particularly since he persistently refused to compromise what he considered to be basic principles. One informant, no friend of the Employees' Union, regarded this councilman as weak because of his refusal to do any horse trading. Another councilman, from a second middle-class ward, fitted generally into the trustee category. But his successor, an officer in a firm doing business with the city and school district, appeared to look upon the position as a business arrangement. All informants agreed that his interest was that of gaining business for his firm. In order to do this, he often gave support to the legislation considered especially important by the Employees' Union, apparently hoping for reciprocity.

In other cities, we found a variety of images of the job. The councilman representing the Polish ethnic group in Beta regarded himself as their delegate. A highly controversial councilman in Gamma regarded himself as the spokesman of the small businessman, especially the neighborhood businessman outside the central business district--but he also appealed for and received labor support. Another Gamma councilman was an official in a labor union local and was expected by other union leaders to represent their interests. But he seems to have develc ed an image of himself as a trustee and shortly alienated his union support. He later gave up his union membership altogether.

The types of councilmen we found could perhaps most adequately be classifiec as follows:[6]

1. The trustee, who accepts the image of the person Edmund Burke saw as the proper representative, one who seeks what he considers the wider, long-range goals of the whole community. He often serves at considerable personal sacrifice and with no personal or constituent interests as a principal consideration. One in this category, in Alpha, was a college professor who was one of the most hard-working, imaginative men we found on the four councils. He probably provided mor actual policy leadership than any of the others. In Gamma, another trustee was the son and heir of one of the city's leading industrialists. He ran for council at the urging of the manger of the Chamber of Commerce and of businessmen. He did so reluctantly, but accepted the draft as part of his family's responsibility to the community. Although he was keenly aware of business and industrial interests as they are affected by city government, he did not regard himself as a spokesman for his social group but rather appeared to be guided by an image he held of the ideal community.

2. The delegate, who considered himself a spokesman for a particular interest. In all except Delta there were men who specifically saw themselves as voices of business, or of some segment of business. Labor had strong delegate strength at all times in Delta, one or more delegates much of the time in Gamma, but almost no such representation in the other two cities. Although we have not yet made a systematic study, delegates generally appear to have lower educational levels and lower social status than trustees. Many of them are hourly-rated employees or clerks. Alpha, with the largest number of trustees, had the highest average education--most of the councilmen had gone to college. Delta, with the largest number of delegates, had the lowest average education--most councilmen ha only a grade schooling and but three college graduates served on the council duri the entire ten-year period of the study.

3. The self-seeker, who used the council as a means of furthering his own goals. The businessman who did this in Delta has already been mentioned. In Gamma, one councilman operated a downtown parking lot. When the council began to consider a plan for downtown public parking, his reaction was not one that might have come from a trustee. Rather, he strongly opposed this threat to his busines unsuccessfully, however. There were probably few other councilmen in this category.

4. The demagogue, who seeks to exploit voter anxieties to a greater extent than does the typical politician. His behavior may be regarded as in bad taste by a substantial number of persons and he probably could not secure acceptance of his campaigning techniques if he were not concentrating on topics that were particularly anxiety-producing. We found no councilmen who were fully committed to demagogism as a technique for securing office, but some of them did exploit anxieti to a degree that would place part of their activities in this category. In Gamma, for example, one councilman, without a program of his own, regularly sought support by appealing to discontent. He courted the votes of city employees who were engage in a struggle over pay rates with the manager; he appealed to neighborhood merchant who saw downtown parking and one-way streets a threat to their businesses (though he was himself a downtown businessman); he appealed to diverse elements who distrusted the council-manager plan. In Delta, a councilman strengthened his position in his ward by making the local utility company a scapegoat. The city operated a competing electric distribution system and in his working-class ward this arrangement had traditionally had support. By exploiting constituent fear that the counci might sell the city system to the utility company, he greatly strengthened his own position. But the techniques of demagogues were not in common use in our four cities over the decade studied.

VI

The degree to which councilmen served as policy innovators and leaders has already been discussed in my Public Administration Review article. As is indicated in Tables 5 through 8, councilmen do not usually serve as policy leaders, although opposition to a proposal may come principally from one or more of them. Even in Delta, with a weak manager, councilmen were seldom leaders. Where members of the governing body do assume leadership, it is likely to be in connection with some specific area or issue in which the councilman has specialized. Thus the proposal to sell the municipal light plant in Alpha was guided through to success by a councilman, while in Delta a councilman led a drive to amend the charter to make it extremely difficult for the same thing to happen in that city.

The lack of a greater degree of leadership by councilmen cannot be attributed totally to their part-time, lay status as compared to the full-time, professional status of the manager and his department heads. Ideological factors also appear to be involved. The trustee-type councilman limits himself as a leader, especially as an innovator, by his commitment to professional administration and hence his willingness both to place heavy reliance upon recommendations of the administration, and by his faith in the manager as one who will guard the interests of the whole city and the routes toward community growth and prosperity. The delegate type limits himself, in turn, by his willingness to accept ideas and assistance in tactical matters from those whom he sees himself as representing.

VII

Elections in each of our four cities were on a nonpartisan ballot and had been since the early 1920's. The regular political parties were not active in municipal campaigns, but there was a relatively high correlation between party vote and the

Table 5

PRINCIPAL ISSUES
COMING BEFORE CITY COUNCIL
ALPHA

Calendar Years, 1953-1957

Issue	Proposition Leadership	Opposition Leadership
Master parking & traffic control plan	*Administration	(Business group), Councilman k,o
Sale of municipal light plant to private company	*Councilman l	Councilman m
New zoning ordinance	*Administration	Councilman k
Bus fare increases	*(Bus company)	Councilman n
Annexation of territory	Councilman n, Manager	(Groups outside core city)
Urban renewal plan	*Administration	Councilman k
Sewer bond issue	* Administration	Councilman o
Leasing of bus line by city	*(Committee of lay citizens)	------
Making suburbs "pay own way"	Councilman n	(Groups outside core city)

* Victorious side in controversy, often after compromises.

Parentheses () indicate leadership from a group outside the formal structure of government.

Opposition to zoning and urban renewal was idelogical in character. The parking and traffic control conflict was principally over the question of whether expediting the flow of traffic was more important than the maintenance of business levels in stores which would be affected by parking limitations and one-way streets. Opponents of the sale of the light plant argued that the status quo should be maintained both because the plant was held to be of adequate efficiency and because it would provide a competitive factor; proponents held the existing system to be costly and wasteful because of duplication of lines and equipment of public and private electric utilities. The annexation issue was indecisive; some, but not all, urbanized township territories were annexed. The position of Councilman n of either cutting off services to suburbs or raising charges sharply was not adopted by the council as a consistent policy, but was not openly rejected.

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Table 6

PRINCIPAL ISSUES
COMING BEFORE CITY COUNCIL
BETA
Calendar Years, 1953-1957

Issue	Proposition Leadership	Opposition Leadership
Building of new city hall	Mayor, Administration	*(Business and Taxpayer groups)
Making suburbs "pay own way"	Councilman p, later q	*Councilmen r, v
Sewer bond issue	*(Committee of lay citizens)	(Taypayer groups)
Water revenue bond plan	*Councilman s, Administration	Councilman q
Bus fare increases	*(Bus company)	Councilman u
New bridge over river	*Administration	3 councilmen
Metropolitan area hospital	(Citizen group), mayor	*(Groups outside core city)
Off-street parking plan	*(Downtown business group)	Councilman t, u
Leasing of bus line by city	*(Bus company, committee of lay citizens)	------
Urban renewal plan	*Administration	------
Minor revolt against manager	Councilmen w, x	*------

* Victorious side in controversy, often after compromises.

Parentheses () indicate leadership from a group outside the formal structure of government.

In some cases, opposition to a proposal was almost wholly of a negative type, other cases involved competing solutions. For example, the alternative to building a new city hall was to remodel an old structure, the solution ultimately selected. Opponents to the plan of cutting off suburban services or raising service charges sharply offered a "good neighbor" policy as a preferable means of encouraging annexation, which was the generally accepted "ultimate solution" on the council. Off-street parking and water supply bond issues were opposed by councilmen who objected to going further into debt. The minor revolt against the manager was squelched by isolating the two dissenters.

Table 7

PRINCIPAL ISSUES
COMING BEFORE CITY COUNCIL

GAMMA

Calendar Years, 1953-1957

Issue	Proposition Leadership	Opposition Leadership
Off-street parking plan	*Administration	(Some business groups, private parking association)
Major revolt against manager	Councilman y	*Councilman z
Wage and salary policy	*Administration	Councilman y
Parking control plan	*Administration	------
Bus fare increases	*(Bus company)	------
Reorganization of bus service	*(Committee of lay citizens)	------
Discharge of two employees	*Administration	Councilman y
Pay increases plan	*Manager	Councilman y
Downtown parking and traffic control plan	*(Downtown business group)	-----
Urban renewal plan	*Administration	(Neighborhood association)

* Victorious side in controversy, often after compromises

Parentheses () indicate leadership from a group outside the formal structure of government.

The revolt against the manager--for a short while his opponents controlled the council--was extended and serious, with many roll calls showing 4-3 votes. Opposition to the parking plan was very strong and was overcome by sustained and open support for the plan by the manager; the issue was essentially the same as in City A. The pay increase plan of the manager emphasized increasing salaried rather than wage employees; the council minority preferred to emphasize wage increases.

Table 8

LEADERSHIP PATTERNS

BY SOURCE

ALPHA, BETA, GAMMA

Source	Proposition Leadership, Cases	Opposition Leadership, Cases
Administration	15	---
Mayor	2	---
Councilmen	7	15
Outside groups	10	7

Note: Totals do not equal the 30 issues listed in Tables 5-7 because leadership was shared in several issues and was lacking in others.

vote for councilmanic slates.[7] The very existence of slates violates, of course, the original idea of electing the most able men on their individual merits. But we found slating in each city, though it was of varying importance and regularity.

The existence of slates raises the question of bloc voting on councils. The old-fashioned city machine, the black beast of reformers, could always, of course, if it were worth its salt, produce the votes needed on important issues. How much bloc voting did we find? Some, but not a great deal, would be a general answer. In Gamma, the mean percentage of agreement on non-unanimous roll calls over a five-year period among persons endorsed by the Chamber of Commerce, was only 53.1 per cent, actually less than for the council as a whole. The closest thing to a consistent bloc we found were the three anti-manager councilmen in Gamma who, over this same period, had a mean agreement percentage of 72.9 per cent. (See Tables 5 and 6.)

In Delta, despite the very considerable power of the City Employees' Union in elections, there was no real bloc except on matter directly related to the bread and butter issues of the Union. We have not completed a study of vote correlations on issues considered of <u>prime</u> importance by the Union, presumably we will find a fairly high percentage of agreement on such matters. But for non-unanimous roll calls generally, CEU endorsees voted together 69.2 per cent of the time, using the mean of means, as against 64.5 per cent for the non-endorsees, not a significant difference in the behavior of the two groups. (See Tables 7 and 8.) On most issues, Delta councilmen were free of pressure from the CEU and we may assume that they voted chiefly according to the interests of their individual wards. In Alpha, Citizens' Committee endorsees had a mean percentage of agreement of 63.9 per cent on non-unanimous roll calls, a figure that reflects the fact that although the Committee to some extent represented a particular point of view, it was not a highly disciplined group. The two councilmen committed to a low-tax ideology had almost an identical correlation, 63.0 per cent. For all Alpha councilmen over the period of 1954-1958, inclusive, the mean percentage of agreement on non-unanimous roll calls was 55.2 per cent. Beta appears to have no identifiable voting blocs.

Some councilmen adopted highly negative attitudes toward the work of their colleagues. They refused to compromise or to join with the traditional effort of councils in small and middle-sized cities to work out their differences in advance of formal roll calls. Thus, in Alpha one of the low-tax advocates had a percentage of agreement of less than 50 per cent with all other councilmen except for the other councilman who shared his philosophy. In Beta, one councilman, a prominent industrial executive, in each of two years had less than 50 per cent of agreement with each of his colleagues. This man, however, stood on principle to make his point only on relatively minor items. On major issues he often served as a leader and mediator. In Delta, the high school teacher already mentioned agreed less than 50 per cent of the time with each of his colleagues except for the councilman from the other middle-class ward (with whom he had a correlation of but 55.6 per cent). These inflexible individuals did not contribute very much to a politics of compromise and in fact the councilmen from Alpha and Delta, as well as others only slightly more flexible, appear to have been largely ignored by their colleagues. The result of their rigidity, like that of the Communists in some European legislatures, was the disfranchisement of the councilman's constituency.

Table 9

CORRELATION OF VOTE

ANTI-MANAGER BLOC

GAMMA

Councilmen	ROLL CALLS	Percentage G-2	G-3	G-11	RAW MEAN
G-2	97	XXX	73.2	79.4	76.3
G-3	71	73.2	XXX	69.0	71.1
G-11	97	79.4	69.0	XXX	74.2
			Mean of Means		72.9

146 non-unamious roll calls possible
5 year period
Mean of means for whole council: 56.9

Table 10

CORRELATION OF VOTE

CHAMBER OF COMMERCE ENDORSEES

GAMMA

Councilmen	ROLL CALLS	Percentage G-1	G-4	G-6	G-8	G-9	RAW MEAN
G-1	35	XXX	XXX	48.6	71.4	54.3	58.1
G-4	62	XXX	XXX	32.3	100	25.8	52.7
G-6	135	48.6	32.3	XXX	58.8	32.8	43.1
G-8	80	71.4	100	58.8	XXX	51.3	70.4
G-9	122	54.3	25.8	32.8	51.3	XXX	41.1
				Mean of Means			53.1

146 non-unamious roll calls possible
5 year period
Mean of means for whole council: 56.9

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TABLE II

CORRELATION OF VOTE
COUNCILMEN SUPPORTED BY THE
CITY EMPLOYEE'S UNION: DELTA

Councilmen	ROLL CALLS	Percentage D-1	D-6	D-7	D-8	D-9	D-11	D-12	D-13	RAW MEAN
D-1	244	XXX	67.4	51.5	63.4	73.8	62.3	63.5	71.7	64.8
D-6	181	67.4	XXX	XXX	70.7	81.6	73.5	66.9	69.7	71.6
D-7	66	51.5	XXX	XXX	57.6	XXX	69.7	63.6	XXX	60.6
D-8	243	63.4	70.7	57.6	XXX	82.5	81.5	70.4	68.7	70.7
D-9	103	73.8	81.6	XXX	82.5	XXX	79.6	68.9	68.7	75.9
D-11	246	62.3	73.5	69.7	81.5	79.6	XXX	81.5	66.7	73.5
D-12	233	63.5	66.9	63.6	70.4	68.9	81.5	XXX	62.6	68.6
D-13	99	71.7	69.7	XXX	68.7	68.7	66.7	62.6	XXX	68.0
								Mean of Means		69.2

251 non-unanimous roll calls possible
5-year period

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Table 12

CORRELATION OF VOTE

COUNCILMEN NOT SUPPORTED BY
THE CITY EMPLOYEE'S UNION: DELTA

Councilmen	ROLL CALLS	Percentage D-2	D-3	D-4	D-5	D-10	D-14	D-15	RAW MEAN
D-2	228	XXX	44.4	41.7	55.6	46.2	47.2	50.0	47.5
D-3	90	44.4	XXX	XXX	XXX	XXX	XXX	XXX	44.4
D-4	12	41.7	XXX	XXX	XXX	75.0	75.0	XXX	63.9
D-5	135	55.6	XXX	XXX	XXX	55.6	54.8	75.0	60.3
D-10	145	46.2	XXX	75.0	55.6	XXX	90.3	100.0	73.4
D-14	144	47.2	XXX	75.0	54.8	90.3	XXX	XXX	66.8
D-15	4	50.0	XXX	XXX	75.0	100.0	XXX	XXX	75.0
								Mean of Means	64.5

251 non-unanimous roll calls possible
5 year period

VIII

One of the cardinal rules of the game in council-manager relations holds that councilman must deal with administrators and employees only through the manager. In our three cities which had strong, professional managers there were few violations of the rule. There were some cases, as in Gamma, where the anti-manager faction opposed centralized administration and wished to deal directly with departmental employees. The same was true of a short-lived anti-manager group in Beta. But Delta, which had never accepted the spirit of reform mechanics, presented a counter-melody to the principal theme. Councilmen not only dealt directly with department heads in discussing policy matters, but they, rather than the manager, bargained with the City Employees' Union over wages, hours and conditions of labor. Furthermore, each councilman was consulted by department heads concerning programs as they affected his ward in particular, and employees were hired not by the manager or his personnel director, but rather by councilmen in consultation with the Union. The patronage system was disapproved of by the high school teacher and one of the councilmen from a Polish ward, but it was well established and its abolition in Delta would have represented a fundamental and dramatic policy change. The manager, furthermore, had no desire to modify the personnel system. As a former ward councilman, he seemed to regard it as part of the natural order of things.

IX

The rule of the designers of the plan that the manager should be chosen only on the basis of administrative ability and knowledge of municipal government could not be tested completely by us. In three of our cities, the managers served during the entire period of study. They were all professionals, college graduates, non-residents when hired, and enjoyed high prestige among the many managers in the state. In Delta, however, the charter requirement that the manager be experienced either in administration or as a practicing engineer had regularly been ignored. The one attempt by the city to hire a professional manager from outside the city had ended in dismissal shortly before the beginning of our study period. The ideas of the manager concerning administration and policy leadership had proved to be incompatible with the ward-oriented values of a majority of the councilmen. His successor was a department head who had had some administrative experience, but no college training. He was a local man who was looking forward to retirement and the councilmen could have assumed, and correctly, that he had no plans for continuing the strong leadership efforts of his predecessor. Almost at once one of the ward councilmen began to campaign among his colleagues for the position expected to become vacant in a short time and, upon retirement of the manager, this man was chosen. His passive, office-manager type of role has already been described. Delta would probably be dismissed by some reform enthusiasts as not even belonging to the council-manager plan category.

X

To summarize this preliminary report on some of our findings:

1. The "able, civic-minded" citizens who were sought by the early advocates of the council-manager plan have been recruited for service on councils in some instances, but the results have been uneven. Using the criteria of educational levels, prestigeful occupations, and bureaucratic experience, Alpha has most closely approximated the image of the model, while Delta has missed it almost totally. The same is true of individual councilmanic role images. Although some delegates from the business community serve in Alpha, the majority of councilmen seek to follow the representational philosophy of Edmond Burke and they believe themselves to be acting for "the whole community," in contrast to the pattern in Delta, where councilmen are, with few exceptions, frankly ward-oriented delegates. The pattern in the other two cities fell somewhere in between these extremes.

2. Councilmen did not serve prominently as policy innovators or as leaders who carried policies, once introduced, to formal acceptance by the council. The manager, his administration, or interest groups were all more important sources of leadership. Even in Delta, where the manager did not lead, councilmen were relatively unimportant when compared with department heads and interest group leaders. Leadership in opposition to a proposal under consideration not uncommonly came from councilmen, however.

3. Councilmen, probably like legislators at all levels, were chosen for a variety of reasons by a variety of constituents, rather than by a cross-section of the whole city. Some had ethnic group support as a central feature, others appealed to particular groups, such as businessmen, union members,or lower middle-class persons on fixed income. Slates of candidates could be found in each city, though in Gamma on an irregular basis only. In two elections in Gamma there was collective campaigning. The Citizens' Committee of Alpha gave considerable publicity to its endorsements. The City Employees' Union in Delta provided funds for literature and personnel for campaigning to those it supported. In Beta, there was only one paid announcement listing endorsees by the Citizens' Committee and no collective campaigning. Some voting blocs appeared on the council in at least three of the cities but they were not highly cohesive and were often transitory.

4. The expectation that councilmen deal with administrators and employees only through the manager was generally followed, except in Delta where direct dealings were commonplace and councilmen controlled both patronage and policies as they affected their individual wards.

5. The expectation that the council is to choose a manager essentially for his administrative and technical knowledge was fulfilled in all except Delta, where all except one of the mangers in the history of the city have been local political figures who are expected to be essentially office managers and are not permitted either to serve as policy leaders or to establish an integrated administrative process.

A general statement concerning the role of the council in our four cities might be that although they applied varying ideological concepts of representation and of administration, they did not perform the idealized role of policy innovation and leadership ascribed to them in the early literature concerning the council-manager plan. Instead, they fitted essentially into the historic role of representative assemblies, performing the functions of debate, criticism, investigation and formal legitimation. In this respect, our city councils performed the same function as that of other American popular assemblies.

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FOOTNOTES

1. See Clarence E. Ridley, The Role of the City Manager in Policy Formulation (1958), and his citations.

2. See, for example, Charles E. Merriam, Chicago: A More Intimate View of Urban Politics (1929); M. Nelson McGeary, "The Councilman Learns His Job," National Municipal Review, vol. 43 (June, 1954), pp. 284-287; Arthur W. Bromage, On the City Council (1950), and A Councilman Speaks (1951). Articles of this type have appeared from time to time in such publications as the National Municipal Review, Public Management and the Public Administration Review.

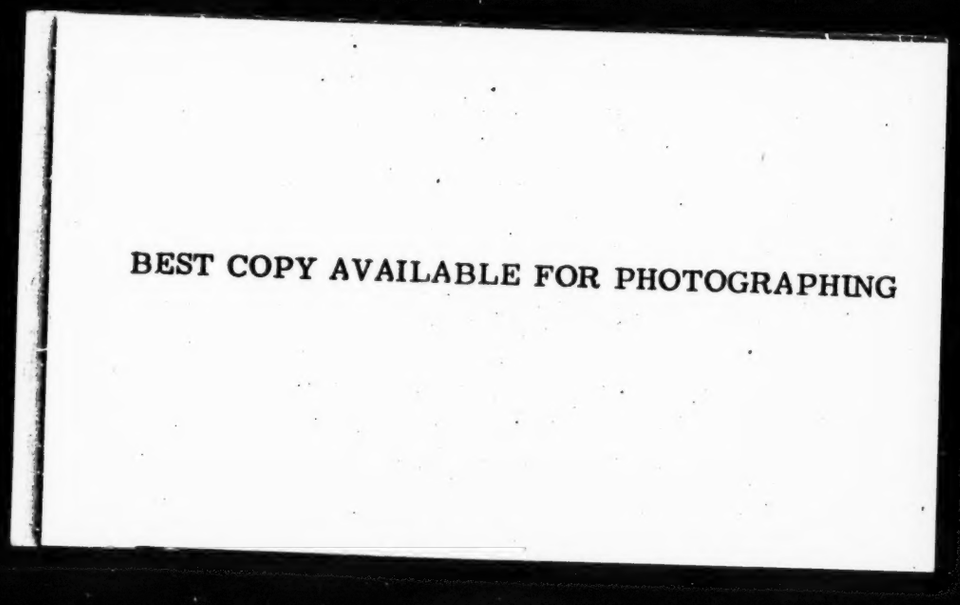
3. See Frank Mann Stewart, A Half Century of Municipal Reform (1950); Richard S. Childs, Civic Victories (1952); and their citations.

4. Charles R. Adrian, "Leadership and Decision-Making in Manager Cities: A Study of Three Communities," Public Administration Review, vol. 18 (Summer, 1958), pp. 208-213.

5. I define the two in ibid.

6. We have made a few attempts to have informants classify councilmen according to the roles defined for legislators in Heinz Eulau and others, The Role Concept in the Comparative Study of State Legislatures (a paper delivered at the 1958 Annual Meeting of the Association), but we found the system too elaborate for our purposes.

7. Oliver Williams and I have prepared a detailed statistical study on this. It will appear in a professional journal in the near future, we hope.


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SOVIET POLITICS--MATERIALS AND METHODS OF RESEARCH

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The purpose of this paper is to indicate some of the materials useful in the study of Soviet politics, and to suggest certain methodological problems connected with their use. Consequently, I shall mention only in passing substantive areas or topics for research.[1] As the focus of the paper is on politics in the stricter sense of the term, the legal and ideological fields, equally interesting to the political scientist, lie outside its scope, as does the general topic of Soviet foreign relations.

I. Direct observation of Soviet politics

During the past three years it has been possible for political scientists, like other scholars, to make brief visits to the USSR. During the past year a few graduate students in political science and related fields have been able to study in the Soviet Union for lengthier periods. Plans are also underway for the exchange of faculty members between Soviet and American universities. Consequently, the possibilities for on-the-spot observation of Soviet affairs appear to be considerable. For the political scientist interested primarily in the study of Soviet politics, however, the obstacles remain formidable. It is questionable whether such scholars can be included in the lengthier exchange programs in the near future; so far the Soviet authorities have limited purely private research visits to a few weeks. Hence it seems most realistic to consider what the political scientist visiting the USSR can accomplish within a brief span of time.

I need not emphasize here, I believe, the importance of the feeling for the Soviet scene which the scholar derives from an initial visit. Moreover--while visitors in recent months have had varying success in trying to carry on frank, informal conversations with Soviet citizens--one can catch a glimpse of Soviet public opinion in even limited contacts. Purely external observation of the Soviet countryside and the appearance of the cities aids one in obtaining a deeper understanding of the nature of the Soviet system. One feels a little more confident in discussing events in the Hungry Steppe or the Pripet Marshes even if he has only seen them from an airplane. These benefits of travel in the USSR may contribute little to one's research directly, but they give it an added dimension which makes at least one Soviet trip an asset of great value to any political scientist specializing on Soviet affairs, who has a working command of Russian.

The greatest obstacle to direct observation of Soviet politics is the general rule that Communist Party matters are closed to non-members, especially foreigners. Since, in fact, nearly all political matters are Party matters, this attitude of the Soviet authorities means in effect that the foreign observer is denied access to the real political processes of the country. In practice, the rule has not always been enforced inflexibly. My own efforts to visit Party institutions (specifically training schools) were futile, but I met one other American who successfully visited a district committee office (raikom) and talked with several officials about Party organizational problems. If one knows precisely what information he wants, and from whom it can be obtained, he can sometimes acquire it through non-Party channels. For example, I requested an interview with a young historian of Spanish origin who

had published two extremely interesting studies on Soviet activity during the Spanish Civil War.[2] He answered several of my questions concerning the role of high Soviet officials in Spain.

My own feeling is that, with rare exception, political scientists will have little to gain by approaching top-level Soviet political figures directly. Indeed, I think that even in West Europe or the United States the investigator usually profits far more from contact with a lower-level official with whom he can deal in a more direct manner and on a more nearly equal footing. It should be pointed out, however, that a competent and alert American visitor of sufficiently high standing can occasionally obtain extremely important information from high officals; such, for example, was the account of Stalin's death, amazing because of its disaccord with the earlier official version, which Khrushchev gave to Averell Harriman.[3]

On the other hand, observation of a high-level event like a Party Congress would be very enlightening even if some of the sessions were closed. Since journalists were admitted to the Twenty-First Congress of the CPSU (Communist Party of the Soviet Union) earlier this year, we can hope that political scientists will be permitted to attend the Twenty-Second Congress in 1961.

II. New trends in written materials

On the whole, however, it would be prudent to assume that in the near future, as in the past, the political scientist investigating Soviet problems will have to rely primarily on written materials. While Soviet researchers are now drawing heavily upon government archives and especially the Party archives, it seems very unlikely that Americans will be allowed to utilize such documentary material. Some effort might be made, however, to obtain access to the documentary biographies of Soviet leaders, which at least are publicly listed in the catalogue of the Lenin Library.[4]

As far as printed books are concerned, little material on recent Soviet politics seems to be available in the USSR which does not eventually reach the Library of Congress and a few other comprehensive collections outside the Soviet Union. The case with local newspapers is quite different. Soviet sources claim that complete files of all newspapers, down to the district (raion) level, are available in the Lenin Library. For many topics, especially those dealing with regional political problems, such source material would be invaluable. Unfortunately, it is just this type of material which requires the most exhaustive study; in many cases the scholar would simply not have enough time on a thiry-day visa to make significant progress.

As I have discussed the value of Soviet dissertations elsewhere,[5] I shall merely point out two items of special value in connection with Soviet politics which I obtained from them. One dissertation contains some extremely interesting references to Lavrentii Beria's maneuvers in the Ukraine just prior to his arrest.[6] While I have been able to check part of this material with a defector who had read the secret Central Committee letter issued after Beria's arrest, other portions, apparently designed for circulation in the Ukraine, had not been known earlier. Another dissertation contains very interesting data on the proportion of Jews in the Belorussian Party apparatus--a subject carefully avoided in Soviet printed sources.[7]

With the aid of the detailed and systematic catalogue in the Lenin Library (where copies of all dissertations are deposited) one can locate and use a considerable number of dissertations in a relatively short time.

Aside from the materials just described--which are available only to those visiting the USSR--there has been a great increase in the flow of publications dealing with contemporary Soviet politics and recent Soviet political history. Sometimes the material appears in the most unexpected places; the Italian Communist visitors to the USSR in 1957 obtained and published more information of the Soviet Party organization than has ever appeared in Soviet publications.[8] Several of the Soviet periodicals which have been started or revived in the past five years contain a wealth of information on political subjects, however. Especially important for month-to-month coverage of Party affairs is the journal Partiinaia Zhizn' (Party life), which is usually far more revealing than the better-known Kommunist. To mention only one instance, a recent article on the fortieth anniversary of the Communist Party of the Ukraine contains a mass of detailed information on the social and national composition of the Party in that area.[9] On slightly earlier periods of Party activity the journal Voprosy Istorii KPSS (Questions of the history of the CPSU) is extremely important.

Since the titles of articles in these periodicals frequently fail to indicate the really important material which they contain, the researcher is confronted with a very difficult task in utilizing them. The difficulty is increased by the fact that relatively obscure regional journals frequently contain very significant items on subjects which are quite unrelated to the portions of the USSR with which the journals usually deal. For example, Ukrai'ns 'kyi Istorychnyi Zhurnal recently contained a very revealing article, apparently by a Bulgarian studying in the Ukraine, on Bulgarian Communist activities during World War II.[10] We urgently need a central clearing house for information on Soviet publications, perhaps in the form of numerous brief reviews in a learned journal.

All of this material must be checked as carefully as possible, for, though much more plentiful than that available in Stalin's day, it is just as distorted. For example, a recent list of plenary sessions of the Ukrainian Central Committee, while extremely useful, omits at least two sessions which were embarrassing to Khrushchev, and fails to mention several questions discussed at other meetings.[11] Another account has only one index listing for "M. S. Spivak,", although the text of the book actually refers to two officials with this name and initials--one of whom has been purged.[12] Even George Orwell, while predicting the role of the "un-person" in totalitarian historiography, did not foresee that it would achieve transmigration of souls! Unfortunately, therefore, it is still impossible to rely on Soviet compendia as "short cuts" in research; careful checking against published accounts contemporary to the events described is essential.

III. Methodological approaches

A number of documentary sources which have long been classified are now becomming available for general use. The American Historical Association is microfilming whole series of captured German documents which relate to activities in the USSR. Although Professor Merle Fainsod's excellent study has examined the principal themes covered in the Smolensk archives, these unique documents (now

available in microfilm in the National Archives) still contain a great deal of material for scholars investigating special topics.[13] For example, a student of channels of communication in the Soviet Party and government could find much revealing data in the Smolensk correspondence. A series of secret bulletins contains much material on mass communications, including, for example, a hint concerning the reasons behind the protracted reluctance of the Soviet regime to utilize radio as freely as the press.[14]

The Smolensk documents also explicitly confirm the impression which many scholars already had, that local Soviet newspapers are much more fruitful sources for many categories of political information than are central papers like Pravda and Izvestia.[15] During the past several years considerable attention has been devoted to such regional newspapers (almost exclusively those from the Union Republic capitals) as are available outside the USSR.[16] Many more special studies could be based on this type of material. In order to be fully effective, however, studies of a non-Russian Republic must use the newspaper published in the native language as well as the Russian-language paper. The two newspapers by no means duplicate one another (at least in the Ukrainian and Belorussian cases with which I am familiar); the non-Russian paper frequently contains the most revealing information on such subjects as personnel changes. Of course, few scholars will know, or have time to acquire, such exotic languages as Georgian and Armenian, though detailed studies of the Transcaucasian Republics are especially urgently needed.[17] The only feasible solution appears to be integrated collaboration between political scientists thoroughly conversant with the Russian language and general Soviet politics, and émigrés from the areas studied.

Aside from the light which they cast on special areas of the Soviet Union, local newspapers and the less frequently used periodicals provide much of the source material needed for a quantitative approach to Soviet politics. With some important exceptions, political scientists working in the Soviet field (unlike sociologists and economists) have been slow to apply the techniques of behavioral science to their subjects. Doubtless this has been largely due to the fact that several of the most important approaches customarily employed in behavioral studies of politics are unavailable in Soviet studies. The absence of meaningful elections makes those faithful standbys of the student of American government--election statistics--practically unobtainable. Today even the student of Japanese or West European politics can derive much support for his generalizations about political trends from public opinion polls; it is doubtful that we shall ever have such information concerning the USSR. The student of Soviet politics cannot even employ the questionnaire approach except in the case of émigré groups, which are rapidly losing value as a source for deriving generalizations about political attitudes and practices in the present-day USSR.

In spite of these handicaps, the student of Soviet politics can amass a considerable amount of material concerning political behavior in the Soviet Union, including much that is quantitative in nature. The Soviet statistics on such matters as nationality or social composition of various classes of political officials are useful, but must be treated with great caution. Beyond the acceptance of ready-made data of this type, however, lies the possibility of "constructing" quantitative information concerning Soviet political activities. A very interesting approach would be a content analysis of Khrushchev's early speeches (in Moscow from 1934 to 1938 and in the Ukraine until 1949). A comparative study of his and, for example, Malenkov's speeches might indicate significant differences in stress and terminology within the general Stalinist framework. Much can also be learned from career patterns of Party and state officials. Such information on careers is ultimately derived from notices of transfers and appointments in Soviet publications;

since these items appear over a long period of time in widely differing political circumstances, it is unlikely that the Soviet press falsifies them. Similarly, analysis of changing patterns of discussion in published accounts of local Party meetings published over a considerable period of years may throw new light on the decision-making process. One can even derive quantitative data concerning such matters as the changing types of officials participating in discussion at Party committee sessions at various periods of the Sovet regime.

Definitive answers to many of the most important questions will probably continue to elude us regardless of the kinds of approaches employed. After all, in spite of the vastly superior facilities available to the student of American politics, and the great number of scholars working in that field, sharp--and, I think, fruitful--controversy on fundamental questions still exists.[18] In a way, the totalitarian nature of the Soviet system itself, which, for example, usually sharply delimits the group which participates in decision-making, renders our task somewhat easier. The scope and importance of the study of Soviet politics is so immense, however, that political scientists working this field can, I believe, feel that their efforts are fully justified even though they fall far short of the maximum result desired. Aside from the "practical" importance of Soviet studies in the present world situation, no real understanding of the nature of the political process in modern technological society as a whole will be possible unless it can draw upon a systematically developed body of information concerning the Soviet system. Despite the laborious effort required in assembling detailed information, and the need for unusual ingenuity in devising research techniques, the prospect for exciting developments in the study of Soviet politics is an excellent one.

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[1]I discussed the topical distribution of political science studies in the Soviet area field in a paper presented at the decennial of the Russian Research Center, Harvard University, January 30, 1958. A revised version of this paper will appear in a collective volume on "American Research on Russia since World War II," edited by Harold H. Fisher (to be published by Indiana University Press, autumn 1959).

[2]José Garcia, "Internatsional'nye brigady v Ispanii (1936-1938 gg.)" (International brigades in Spain /1936-1938/), Voprosy Istorii, No. 7, 1956, pp. 33-48; and Ispaniia Narodnogo Fronta (Spain of the Popular Front), (Moscow: Izdatel'stvo Akademii Nauk SSSR, 1957).

[3]New York Times, July 3, 1959; cf. Leo Gruliow (ed.), Current Soviet Policies (New York: Frederick A. Praeger, Inc., 1953), pp. 246-47 for a translation of the original notice on Stalin's death.

[4]The listings appear in the general catalogue of the Lenin Library under the names of the leaders; only such important figures as A. A. Zhdanov and A. S. Shcherbakov are listed.

[5]"Clues to the Soviet Political Archives," The Russian Review, XVI (1957), 47-52.

[6]I. A. Fateev, "Bor'ba Kommunisticheskoi Partii Sovetskogo Soiuza za povyshenie bditel'nosti sovetskogo naroda v poslevoennyi period (1945-1953 gg.) (na materialakh kievskoi, khar'kovskoi i l'vovskoi oblastei USSR)" (The struggle of the CPSU for increasing the vigilance of the Soviet people in the postwar period /1945-1953/ /from materials of the Kiev, Kharkov, and Lvov oblasts of the Ukrainian SSR/), Kiev University dissertation, 1954 (revised 1956!), p. 285.

[7]N. P. Khripko, "deiatel'nost' KPSS po podboru, rasstanovke i vospitaniiu partiinykh kadrov v chetvertoi piatiletke--1946-1950 gg. (na materialakh Belorusskoi SSR)" (Activity of the CPSU in the selection, distribution and education of Party cadres during the fourth Five Year Plan, 1946-1950 /from materials of the Belorussian SSR/). Minsk University dissertation, 1956, p. 121.

[8]Problemi e Realtà dell 'URSS:, Relazione sul Viaggio della Delegazione del PCI nell Unione Sovietica (Rome: Editori Riuniti, 1958).

[9]"Kommunisticheskaia Partiia Ukrainy v tsifrakh" (The Communist Party of the Ukraine in Figures), Partiinaia Zhizn', No. 12, 1958, pp. 57-59.

[10]I. V. Ganevich, "Pro uchast' bolgars'kykh trudiashchykh u natsional'no vyzvol'nyi borot'bi Iugoslavs'koho narodu (1941-veresen' 1944 r.) (On the participation of the Bulgarian toilers in the national-liberation struggle of the Yugoslav people /1941-September 1944/), Ukraïns'kyi Istorychnyi Zhurnal, No. 2, 1958, pp. 94-103.

[11]"Materialy do istoriï KP Ukraïny" (Material on the history of the Communist Party of the Ukraine), Ukraïns'kyi Istorychnyi Zhurnal, No. 3, 1958.

[12]Moisei Semenovich Spivak was a major figure in the Ukrainian Party until 1952, when, after severe criticism, he dropped from sight; thereafter, one Mark Sidorovich Spivak, who had been increasing in prominence since 1948, was prominently mentioned as "M. S. Spivak."

[13]Merle Fainsod, Smolensk under Soviet Rule (Cambridge: Harvard University Press, 1958).

[14]Biulleten' Glavlita RSFSR i OVTS, No. 8, 1934, in Smolensk Archive, T/88, EAP 116/154-g.

[15]Fainsod, op. cit., pp. 9, 365.

[16]The most extensive use of local newspaper material for a political study is Thomas H. Rigby, "The Selection of Leading Personnel in the Soviet State and Communist Party," University of London doctoral dissertation, 1954. Boris Meissner systematically utilized the local press for his detailed studies in Osteuropa, 1951-56. My The Soviet Bureaucratic Elite: A Case Study of the Ukrainian Apparatus (New York: Frederick A. Praeger, Inc., 1959), uses the Ukrainian newspapers for 1938-57 and a few others.

[17]As an example of what can be done in this direction see "Les crises du parti Communiste de la R.S.S. de Géorgie," Chroniques Etrangères, URSS (France: Direction de la Documentation), No. 162, 1956, pp. 13-22.

[18]See, for example, Robert A. Dahl's critique of C. Wright Mills' The Power Elite, in "A Critique of the Ruling Elite Model," American Political Science Review, LII (1958), 463-69.

[7]N. P. Khripko, "deiatel'nost' KPSS po podboru, rasstanovke i vospitaniiu partiinykh kadrov v chetvertoi piatiletke--1946-1950 gg. (na materialakh Belorusskoi SSR)" (Activity of the CPSU in the selection, distribution and education of Party cadres during the fourth Five Year Plan, 1946-1950 /from materials of the Belorussian SSR/). Minsk University dissertation, 1956, p. 121.

[8]Problemi e Realtà dell 'URSS:, Relazione sul Viaggio della Delegazione del PCI nell Unione Sovietica (Rome: Editori Riuniti, 1958).

[9]"Kommunisticheskaia Partiia Ukrainy v tsifrakh" (The Communist Party of the Ukraine in Figures), Partiinaia Zhizn', No. 12, 1958, pp. 57-59.

[10]I. V. Ganevich, "Pro uchast' bolgars'kykh trudiashchykh u natsional'no vyzvol'nyi borot'bi Iugoslavs'koho narodu (1941-veresen' 1944 r.) (On the participation of the Bulgarian toilers in the national-liberation struggle of the Yugoslav people /1941-September 1944/), Ukraïns'kyi Istorychnyi Zhurnal, No. 2, 1958, pp. 94-103.

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COMMUNIST CHINA'S IMPACT ON ASIA

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"In the end the socialist system will replace the capitalist system," Mao Tse-tung proclaimed in Moscow in November 1957. "This is an objective law independent of human will," he declared; it is the "wheel of history."

In the decade since the Chinese Communists came to power, Mao and his followers have worked relentlessly to push the "wheel of history" toward their goals, and the Peking regime has emerged as one of the most disturbing and dynamic influences on the world scene.

It is by no means simple to measure the impact which Communist China has had on Asia during the past ten years, or to predict with certainty the role which it will play in the future. But the outline of its goals, and the pattern of its strategy, are both reasonably clear.

The Chinese Communists identify their destiny with that of the Communist bloc and the international Communist movement as a whole. At the same time, they are clearly determined to build China itself into a great power, to acquire a predominant position in Asia, and to play a leading role in promoting the expansion of communism.

Peking's most notable accomplishments to date have been at home, but the strengthening of its domestic base for power has a direct and important bearing on the growth of its international influence and stature.

One of the most far-reaching political revolutions in history has taken place within China in the past ten years. The Communists have had their difficulties, and many of them have been serious. Since 1956, in fact, discontent with their pervasive controls has been expressed more openly than ever before, in the "hundred flowers" episode of 1957 and in the Tibetan revolt this year. Yet, what stands out as most remarkable, if one looks at the entire period since 1949, is not the fact that ruthless totalitarian rule and continuing social upheaval have produced disaffection, but that the Chinese Communist Party has achieved a control over 650 million people which is awesome.

The Chinese Communists almost certainly possess greater control over the Chinese people than any previous regime in Chinese history. In a few short years, they have restored centralized rule over a large part of the traditional Chinese empire, destroyed the basis of warlordism and provincialism which have plagued every Chinese government in the modern period, and established a

government possessing both the will and the organizational apparatus to implement its policies. Even more striking, they have extended the power of the state down to the level of the village and the individual in a way which has no precedent in China. Their capacity to mobilize China's people and resources far exceeds that of any past Chinese regime, which is saying a good deal if one remembers that centuries ago authoritarian Chinese rulers drafted millions to build the Great Wall and Grand Canal.

The basis of Communist strength in China rests on many factors. Peking's armies, the successors of revolutionary forces which seized power in 1949, provide the ultimate guarantee of the Communists' monopoly of power in China, but these armies are merely one arm of the Communist Party. It is the party, together with the extraordinarily pervasive web of governmental and political organizations under its control, which rules the country. Several features of this apparatus in China are particularly notable. The leaders of the party have maintained a remarkable unity and cohesion, far greater than that of Communist parties elsewhere. For over twenty years they have accepted the top authority of one man, Mao Tse-tung, and they have kept internal factional struggles to a minimum. This has been a major source of strength. Another has been their success in developing techniques of mass organization, subtle coercion, and intensive persuasion which are not only the most revolutionary political innovation in China under communism, but which also appear to be even more effective in mobilizing and regimenting huge numbers of people than the Soviet techniques and institutions which inspired them. Peking's methods of "thought reform," in particular, represent what appears to be a new and alarmingly effective contribution to the theory and practice of modern totalitarianism.

The communes, set up in 1958, are another special, and in many respects frightening, feature of communism in China. Established with the aim of organizing the Chinese people to live communally, as well as to work collectively, these new institutions represent a degree of control which is almost Orwellian. How far the communes will be pushed toward the ultimate goals described when the program was first started remains to be seen. Clearly, they have encountered significant resistences, and since the height of the organizing campaign last fall, Peking has backed away from some of the goals first announced. Yet, the process of consolidating the communes is proceeding, and if they work, even in modified form, they will substantially augment Peking's already tremendous control over China's most bountiful and impressive resource -- people.

Asians in neighboring countries watch these developments in China with both unease and fascination. Many are repelled by Peking's ruthlessness; the after-effects of the "100 flowers" period, the communization program, and the revolt in Tibet have had reverberations reaching far beyond China's borders. Others are fearful in the face of Communist China's obvious dynamism and growing strength. But some are also greatly impressed by the Chinese Communists' success in infusing a sense of discipline and national purpose into a disorganized country.

The process of rapid economic growth which Peking has initiated is a factor of special significance in Communist China's growing power and influence in Asia. In an era when the leaders of all underdeveloped nations are dedicated to rapid economic development, there is little doubt that the future of Asia will be greatly affected by the relative success of different formulas for growth.

During the past decade, the Chinese Communists, using extreme totalitarian methods, have been building up their economy at a rate as fast or faster than that of any other underdeveloped nation. What they are attempting to do is apply the Stalinist formula for economic development -- with significant modifications and innovations -- to an overpopulated and underdeveloped Asian nation. Despite the immense difficulties which they face, they have made large strides toward the goals they have set for themselves. Realizing that heavy industry is the key to great power status in the modern world, they have concentrated on building this sector of the economy, and they have forced the Chinese people to accept austerity and hardship, in the name of national power and future benefits. As a result, although the population of China has paid a high price for the regime's progress, Peking's economic strength has steadily grown.

Communist China started its first Five Year Plan in 1953. When the Plan was completed, at the end of 1957, Peking announced that in five years it had invested over $20 billion in "capital construction" and had completed over 800 large "above-norm" industrial projects. Between 1952 and 1957, it claimed, mainland China's gross output of both industry and agriculture had risen by more than 60 per cent; gross industrial output alone had reportedly jumped by 120 per cent (over 200 per cent in capital goods and 85 per cent in consumer goods); while the gross output of agriculture was said to have increased by close to 25 per cent.

Not all of Peking's claims for the first Plan period can be taken at face value. The Chinese Communists have encountered many difficulties in developing accurate statistical methods; they have found it necessary to alter some of their statistical standards; and they are certainly not averse to manipulating figures for propaganda purposes. Yet, even if some of their specific figures must be discounted, there is every reason to take their basic claims for the first Plan period seriously.

What, in brief, do these claims indicate? On the basis of the available data, it seems clear that between 1952 and 1957 Peking not only expanded its heavy industrial base very rapidly, but it also achieved an extremely impressive rate of overall economic growth. Because their program focuses on national power rather than individual welfare, standards of living stayed low, but China's gross national product (GNP) -- the key indicator of overall economic growth -- rose rapidly. Peking's official claims indicate that the GNP rose at an average annual rate of 8 to 9 per cent between 1952 and 1957. Some estimates made by economists in the United States, using Western methods of calculating, place the figure slightly lower, at 7 or 8 per cent. Whatever

exact figure one accepts, it appears that during its first Five Year Plan, Communist China's GNP increased at a rate close to double the rate of about 4 per cent which India, a nation dedicated to democratic methods, as well as economic development, achieved between 1951 and 1956.

Japan's GNP was increasing at a rate comparable to Communist China's during the same period, indicating that the Communists in China are not the only Asians capable of achieving rapid economic growth. But Japan is not an underdeveloped nation, and Asians are more likely to compare Peking's accomplishments with those of other nations which are still non-industrialized. Furthermore, if one compares Communist China's present drive to develop its economic strength with Japan's continuing process of economic growth, these are striking contrasts. Even though Japan is far ahead of Communist China in overall production, per capita output and standards of living, Peking, by concentrating its efforts on developing heavy industries, may soon surpass Japan's industrial base for modern military power. It has rapidly caught up with Japan in steel output, for example. Steel production in Communist China jumpted from 1.35 million tons in 1952 to 5.35 million in 1957; last year it reportedly soared to over 11 million tons, and at the start of this year the 1959 target was set at 18 million.

Peking has redoubled its efforts to develop the Chinese economy in the past two years, since the start of its second Plan, and in this period it has claimed achievements which are literally fantastic. These claims are extremely difficult to evaluate, but the general trends have been clear even if the exact facts are elusive.

Some time in early 1958 the Chinese Communists threw away the book, so to speak, scrapping their preliminary production targets for the second Five Year Plan, and announcing a "great leap forward." Projecting new rates of development unprecedented in China or anywhere else, they proceeded to mobilize literally tens of millions of peasants to contruct new irrigation works, to carry out new methods of intensive cultivation, and to build thousands of small "blast furnaces" and "factories" in rural areas. Finally, in late 1958, they communized the entire rural population.

In essence, the Chinese Communists' big push since 1958 has been an effort to mobilize even more effectively than before all of China's resources -- and in particular its human resources, female as well as male -- to speed up the development process. A revealing clue to the regime's determination to regiment and goad the entire population to achieve its goals was the announcement in late 1958 that care should be taken to see that the peasants are allowed eight hours of sleep a night.

At the end of 1958, Peking, in summarizing its "great leap forward," made official claims which defy belief. It asserted that gross industrial output had risen by over 65 per cent in twelve months, while steel production was doubling. Even more unbelievable, it claimed that grain output had also doubled, rising from 185 to 375 million tons in a single year.

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These figures, and especially the claims for agriculture, are almost certainly inflated; they may even involve conscious large-scale falsification. Until further evidence is available, therefore, one can only reserve judgment on the exact dimensions of China's economic spurt in 1958. Nonetheless, it is undoubtedly true that by a herculean effort, and an unparalleled mobilization of manpower, the Chinese Communists have in fact, substantially accelerated the pace of their economic development since 1957.

All of this should not obscure the fact that Peking faces immense economic problems. Some of these, such as China's rapidly growing population and the Communists' large military expenditures, derive from the basic nature of Chinese society and the Peking regime. Others, however, have been created by the Chinese Communists' recent policy decisions. The frantic haste of the "great leap forward" has caused serious economic dislocations and bottlenecks. Many of the small blast furnaces and factories have already been abandoned as impractial. And natural disasters recur regularly; this year they have apparently struck once again on a huge scale.

However, on the basis of the Chinese Communists' demonstrated ability to bulldoze ahead, despite all difficulties and at whatever cost to the Chinese people, it is only prudent to assume that the Peking regime will continue making impressive economic gains and will go on building up its economic power at a rapid rate, a rate at least comparable to that achieved in the first Plan period and perhaps higher.

What will this mean for the rest of Asia? Among other things, it will mean that if present trends continue, the already great gulf between Communist China's military power and that of other Asian nations will widen. If, as now seems likely, Peking's strength in heavy industries soon surpasses that of Japan, this will inevitably have a significant effect on the balance of power in the Far East. Of equal importance, if the rate of Communist China's overall economic growth far exceeds that of other underdeveloped countries, in the long run this could have very disturbing repercussions in other Asian nations. It might breed increasing fear of Peking's dynamism and encourage the feeling that weaker nations must make a resigned accomodation to Communist China's growing power. Conceivably, it could significantly enhance the attraction of the Communist formula for economic development, increase the feelings of frustration in nations whose economic progress is less rapid, and help to reinforce Communist movements throughout Asia. This is certainly one of Peking's conscious aims. "China's experience provides convincing proof," an official Chinese Communist journal declared in 1958, "that once the people of a country have become masters of their own destiny and follow the socialist path, they are able to develop their national economy at a rate never before known in their history."

There is nothing inevitable about these disturbing prospects. If the non-Communist countries of Asia can generate a dynamism of their own, speed up their progress, and make substantial economic gains without resorting to totalitarian methods, this will certainly help to offset Peking's developing

strength. If this does not happen, however, Communist China's rapid growth could have an extremely disrupting influence in the years ahead.

With its domestic base for national power steadily improving, Peking can, in any case, be expected to strive persistently to achieve its ambitious foreign policy goals. It is important, therefore, that these goals, and the Chinese Communists' strategy and tactics in pursuing them, be adequately understood It is essential to ask some fundamental questions. How do the Chinese Communists look at the world? What do they feel China's role in it should be? What are they attempting to achieve, and how do their day-to-day foreign policy tactics relate to long-range strategic concepts?

There can be disagreement about many of Communist China's aims, but Peking's leaders are explicit in stating one thing: they are determined to be accepted as a great power. Premier Chou En-lai stated this bluntly in 1956; Communist China's views, he said, should be heard "in the settlement of any major international issue."

In addition, the Chinese Communists obviously accept a new version of "Asia for the Asians" and seem confident that if Western influence can be expelled from Asia, Communist China will automatically become the dominant power in the region. One of the clearest statements of this idea was made by Chou at the Geneva Conference in 1954. "We hold," he declared,"that interference in the internal affairs of Asian nations be stopped, all foreign military bases in Asia be removed, foreign armed forces stationed in Asia be withdrawn, the remilitarization of Japan be prevented, and all economic blockades and restrictions be abolished." This was a frank and concise way of saying: leave Asia to us.

In the Chinese Communists' eyes, the United States is their central enemy. It is the only nation now capable of counterbalancing their power and blocking the achievement of many of their basic aims. All nations allied with the United States are labelled contemptuously as mere "tools of imperialism."

Peking's leaders place special importance on the role of Japan as the key nation in terms of regional security. Liu Shao-ch'i, second only to Mao in the Peking hierarchy, has stated this very clearly. "It would be impossible for American imperialism or any other imperialist power to launch large-scale aggressive war in the Far East without Japan as a base," Liu declared in 1953, adding that "It can be said that peace in the Far East is assured as long as it is possible to prevent the resumption of aggression and violation of peace on the part of Japan or any other state that may collaborate with Japan."

There are other areas on China's immediate periphery which Peking also regards as being of particular importance to its national interests. Of prime importance, of course, is Taiwan. The Chinese Communists look on Taiwan as "unliberated" Chinese territory and in this sense not a "foreign" policy issue at all. Although they apparently hope to win Taiwan eventually without risking a major war with the United States, they will certainly continue attempting

to probe, threaten, and subvert the Chinese Nationalist and American position, and for this reason the Taiwan Strait area will undoubtedly continue to be dangerous and potentially explosive for a long time to come.

The Chinese Communists are sensitive about all their border areas, and, like most strong Chinese rulers in the past, they have exerted outward pressures at many points on China's circumference. Undoubtedly, Peking now regards both North Korea and North Vietnam as buffer areas of great importance, and it would probably go to great lengths to prevent any serious military threat to China arising in or from either area. It has probed the undefined Burma frontier, and created serious doubts about China's intentions regarding some of its other borders which are as yet not clearly settled. Conceivably, at some time in the future, the Chinese Communists might put forth irredentist claims elsewhere, to Hong Kong and Macao or to territory on the India border; it is not beyond the realm of possibility that they might some day try to reestablish claims to territory in Outer Mongolia or in the Soviet Far East where the Chinese once were predominant.

Yet despite the fact that Peking's leaders, like the leaders of any modern nation, have a great and real concern about territorial questions, national security problems, and similar issues, these do not provide the sole key to an understanding of their view of the world. The key must also be sought in their ideological convictions.

There is no doubt that the present leaders of Communist China are genuine and dedicated revolutionaries, with a strong sense of mission to speed up the course of an "inevitable" world revolution. In all probability, they are more moved by ideological considerations than the second-generation Communists who now rule the Soviet Union. Ideology clearly molds Peking's strategy and provides the rationale for both the ends and means of its foreign policy. While the Chinese Communists are pragmatic in interpreting their ideology, it would be a great error to believe that ideology is no more than a meaningless cloak for their national interests. It is, in fact, a basic determinant of their long-range strategy.

The Chinese Communists see the world as engaged in a prolonged, continuous and intense revolutionary struggle, and this simple fact has profound implications. They are not fundamentally concerned with freezing the existing status quo, stabilizing situations, or permanently "solving" problems. Instead they are interested in promoting constant change, in the hope that each change, however small, will further their long-term aims. They view the worldwide struggle as one in which great social, economic, and political forces -- some identified with particular national states and others cutting across national lines -- are contending for supremacy. Consequently, international relations are not only, or in many situations not even primarily, a matter of conventional dealings between governments. Government-to-government relations are regarded as important, it is true, but equally important in Peking's eyes is the necessity of using every possible instrument of policy, formal and informal, overt and covert, to influence social trends, political opinions, and economic

conditions within foreign countries, in order to exert an indirect influence on the policies of other governments, and, in favorable situations, to promote revolutionary changes.

Viewing the world in this fashion, the Chinese Communist leaders have a very sophisticated philosophy of power, evolved during their own struggle for power within China, which conceives of power in very broad terms. They certainly believe that there is an intimate relationship between military and political power. In an oft-quoted statement, Mao Tse-tung declared bluntly over two decades ago: "Political power grows out of the barrel of a gun . . . Anything can grow out of the barrel of a gun." Yet the Chinese Communists also recognize that power in the modern world is the product of many complex factors -- political, economic and psychological, as well as military -- a product of people and ideas as well as guns. They attach extraordinary importance, in fact, to men's minds, and appear to believe that by manipulating them they can gain control over basic social forces and thereby offset the power even of enemies with greater military strength. Despite the great emphasis which they place on the need for military power, therefore, their concept of continuing world revolution is not a simple idea of military conquest, and it involves, in fact, a strategy which is far more complex and subtle than overt military expansionism.

In translating strategy to tactics, the Chinese Communists are masters of the zigzag. Although tactical opportunism is characteristic of Communists everywhere, Mao and his followers have elaborated a doctrine of flexibility, growing out of the revolution in China, which has a unique Chinese flavor. Thinking, as they do, in very long-range terms, they are prepared to make tactical retreats, when necessary, without abandoning their constant striving toward ultimate goals. "To defend in order to attack, to retreat in order to advance, to take a flanking position in order to go straight -- these," Mao once said, "are the inevitable phenomena in the process of development of any event or matter . . . All of us know that in a boxing contest a wise boxer usually yields a step . . ."

Most important of all, as Peking's leaders view the world, they see an unceasing contest between two camps -- Moscow, Peking and the so-called "camp of peace" on the one side, the United States and its allies in the "imperialist camp" on the other. Each situation, each problem, and each issue is evaluated in terms of its relationship to this basic struggle, and to the fundamental aim of steadily enlarging the size, strength, and influence of the Communist sphere.

Between these two poles are the "colonial" and "semi-colonial" countries, the uncommitted nations, and the broad area which Lenin regarded as the "rear bases" of imperialism, without which the "capitalist" world ostensibly would crumble. The Chinese Communists look on this area as a political battleground, a primary focus of the struggle between the two camps, and they obviously feel that China, as the Asian partner in the Sino-Soviet alliance, must play a very large role in the Communists' approaches to this area.

Within the broad framework set by its long-range goals, Peking, in close coordination with Moscow, has made several extremely important tactical shifts in its foreign policy in the past decade, and among the most important have been its changes of approach toward the non-Communist Asian nations which, in its view, belong to the "colonial" and "semi-colonial" world. These shifts have had far-reaching effects on Communist China's relations with all of Asia.

The most striking contrast is between the "peaceful coexistence" tactics which Peking, and the entire Communist bloc, evolved during 1952-1954, and the militantly revolutionary posture which the Chinese Communists adopted when they first came to power.

In their first flush of victory in 1949, Peking's leaders, apparently confident that their own success would give a decisive impetus to Communist insurrections throughout Asia, openly and unabashedly proclaimed their broad revolutionary aims. Calling for "armed struggle" wherever possible, Liu Shao-ch'i declared that "The path taken by the Chinese people . . . is the path that should be taken by the peoples in the various colonial and semi-colonial countries in their fight for national independence and people's democracy." All the non-Communist leaders in Asia, including those in the non-aligned nations, were regarded as "running dogs" and "hirelings" of the "imperialists."

Five years later, Peking and the Communist bloc as a whole had put on a new and very different face. The Chinese Communists embarked on a major diplomatic campaign to woo the non-Communist governments of Asia, and in particular the governments in the non-aligned nations. In April 1954 they signed an important agreement with India embodying the now-famous "five principles of peaceful coexistence," in which Peking pledged "non-interference" in other countries' affairs. Chou En-lai soon converted these principles into a major themesong with which he attempted to attract the non-aligned nations into alignment with the Communist bloc in one broad "zone of peace." "Revolution is not for export," Chou blandly assured the Indians, the Burmese and others. And then, at the Bandung Conference of Asian and African nations in early 1955, he adopted a conciliatory posture in a dramatic way which had a wide impact on many Asians. We "come here to seek unity, not to quarrel," Chou declared at Bandung; all Asian nations should "seek common ground," and this would be found, he said, in "doing away with the sufferings and calamities of colonialism."

Since that time, the entire Communist bloc, pursuing this "peaceful coexistence" approach, has made vigourous efforts to attract the non-Communist countries of Asia, and it seems likely to continue these tactics for a long time, unless, at some point, it decides that the balance of world forces has swung drastically in the Communists' favor. Clearly, Peking, Moscow, and their allies, now feel that with the world balance as it stands, they must concentrate on wooing the existing governments in non-Communist Asia, while standing ready to exploit revolutionary situations within these countries if and when they occur.

Peking's policy is never confined exclusively to either blandishments or pressures, however. Attraction is always mixed with intimidation and suversion even though the recipe constantly changes. This fact is probably clear to a good many more Asians now that it was during 1955 and 1956, when the "Bandung Spirit" was at its height. Since the latter half of 1957 both Peking and Moscow have shown a new militancy in their foreign policies, and although this has been directed above all against the West, it has inevitably affected Communist China's relations with the rest of Asia.

The causes of this most recent shift are debatable. Conceivably, both partners in the Sino-Soviet alliance may have decided that "sputnik" and other Soviet technological advances had swung the world balance sufficiently in their favor to give them a new opportunity to seize the strategic initiative. They may have concluded that militancy abroad would help counter unrest within the Communist bloc. Peking, on its part, may simply have become impatient with the pace of its progress toward achieving certain of its fundamental foreign policy aims.

Whatever the correct explanation for the shift may be, since 1957 Communist China has, in fact, shown increased impatience and pugnacity and has applied new pressures or threats in a variety of ways and places -- by banning all trade with Japan, hinting at its willingness to send "volunteers" to the Middle East and Indonesia, using its own brand of brinkmanship in bombarding Quemoy, engaging in cutthroat economic competition in Southeast Asia, issuing warnings to Laos about its treatment of the pro-Communist Pathet Lao and to South Vietnam about its activities in the Paracel Islands which Peking claims, and, most recently, accusing India of intervening in Tibet. These pressures and threats have certainly tarnished the "five principles", even in the eyes of many of the Asians who have been most predisposed to view the Chinese Communist regime sympathetically. Yet, it would be a mistake to conclude that Peking has abandoned its general tactics of "peaceful coexistence." It seems likely that, while its blend of attraction and intimidation may vary from time to time, Peking will continue focusing its efforts on the short-term aim of separating the non-Communist Asian nations from the West and aligning them with the Communist bloc, while steadily working to build up Communist China's prestige and influence throughout Asia and covertly encouraging Communist revolutions within other Asian states.

In pursuing its foreign policy goals, Peking has numerous instruments of policy at its command: its military power, both conventional diplomacy and "people's diplomacy," trade and aid, the Overseas Chinese, and the Communist parties throughout Asia. Each deserves at least brief consideration here.

Communist China's military forces, reorganized and modernized since 1949, are now probably stronger than the military establishments of all the non-Communist nations of the Far East, Southeast Asia, and South Asia combined. Peking has: two and a half million men in its "People's Liberation Army," backed by millions more in its reserves and its militia; 2,500 planes in its airforce, 1,800 or more of them jets; and a navy which although small is

nevertheless the largest indigenous naval force in the Far East. All of these forces are supported by continuing Soviet assistance and advice.

The only effective counterweight to Communist China's military strength at present is that provided by American air and naval units, armed with nuclear as well as conventional weapons. The Chinese Communists have not yet joined the "atomic club." Peking's leaders have publicly declared that they intend to obtain nuclear weapons, however, and in mid-1959 Khrushchev was reported to have claimed that Russia has already sent them rockets -- which presumably could be provided later with nuclear warheads.

For the past several years, there has been a rough sort of balance between American atomic weapons and Chinese manpower, and Peking, in the name of "peaceful coexistence," has refrained from bringing the full weight of its military power to bear on its Asian neighbors. Nevertheless, Communist China's growing strength has steadily enhanced its international prestige and its ability to make its political weight felt in Asian affairs. No country on China's periphery can today overlook the fact that Peking, even when speaking softly, carries a big stick.

The Chinese Communists do not seem likely to use their big stick to embark on overt aggression in the foreseeable future. There is, it is true, a continuing danger of war breaking out in the Taiwan Strait area, where the Communists will doubtless continue using overt military pressures and threats to assert their territorial claims. Elsewhere, however, the greater danger is that Peking might decide to step up its pressures on neighboring countries by channeling indirect or covert military support to local insurrectionary groups. If it does this, it might simultaneously adopt a threatening posture, to create a fear of Chinese intervention, in order to inhibit neighboring governments from taking all-out measures against their local Communists. If Peking's actions were sufficiently ambiguous or disguised, it might be extremely difficult to pin clear responsibility for interference on the Chinese Communists or to counter this "indirect aggression" either by threats of atomic retaliation or by other pressures directly against China.

Since adopting tactics of "competitive coexistence," the Chinese Communists have, in any case, deemphasized overt military pressures on their neighbors and have made vigorous efforts to expand their influence throughout the Asian-African world by more conventional and respectable political and economic means.

Diplomatically ostracized by the United States and excluded from most international bodies, Peking has nevertheless steadily expanded its contacts abroad. Its successes have been most notable in South and Southeast Asia and in the Middle East and North Africa, where it has been able to establish diplomatic relations with Burma, India, Indonesia, Pakistan, Afghanistan, Nepal, the U.A.R., Yemen, Ceylon, Cambodia, Iraq, Morocco, and Sudan. At the height of Chou En-lai's freewheeling drive to broaden and develop Communist China's diplomatic influence, during 1954-1956, the Chinese Communists signed

numerous joint statements and communiqués with the leaders of non-aligned nations in Asia, and it concluded several important intergovernmental agreements with India, Indonesia, and others.

In all of its diplomatic dealings, Peking has persistently worked toward certain limited, short-term aims: to arouse and exploit anti-colonial resentments, to reinforce neutralism, to highlight existing areas of agreement between the Communist bloc and the newly-independent nations, to mobilize support for the Communists' views on issues such as the control of atomic weapons, and in subtle ways to align the non-aligned nations with the Communist orbit. The impact of its efforts on the Asian-African world should not be underestimated. It is true that since the hardening of the Communists' policies in 1957, and particularly since Peking's suppression of revolt in Tibet, many Asians have taken a more critical look at Communist China, and this is significant. But it would be wishful thinking to assume that Peking has lost all of its power of attraction.

One of the most remarkable aspects of Communist China's foreign policy in recent years is the fact that despite its immense domestic economic problems, it has assumed an important role in the Communist bloc's economic offensive. It has, in fact, become a major participant in the current economic competition, focusing on the underdeveloped areas, between the Communist world and the West.

Peking's total foreign trade has more than doubled in the past decade, rising from $1.8 billion in 1950 to perhaps $4.9 billion in 1958. In contrast to the years before 1949, the bulk of this trade has been with Russia and Eastern Europe, and it has consisted essentially of an exchange of Chinese agricultural products for needed capital goods. Since 1952, however, the Chinese Communists have steadily increased their trade with the non-Communist nations and, in particular, they have vigorously promoted trade with the Asian-African area. Peking's motives in this are clearly political as well as economic. "Greater economic cooperation among Asian and African countries" should be greatly expanded, one of Peking's official journals stated frankly in 1958, so that these countries can "free themselves quickly from the economic enslavement by imperialism . . ." The political motives underlying Communist China's trade drive undoubtedly go beyond the simple aim of purchasing good will; since 1958, its strong economic sanctions against Japan and its drastic price-cutting, bordering on dumping, in Southeast Asia, provide a warning that Peking may be able to use trade as an instrument of direct political pressure in certain instances.

At present Communist China is trading with more than 80 non-Communist countries or areas. By early this year, it had signed formal, intergovernmental trade pacts with a wide range of countries in the Asian-African area: India, Afghanistan, Ceylon, Burma, Indonesia, Cambodia, the U.A.R., Lebanon, Nepal, Yemen, Tunis, Morocco, Iraq, and Sudan. Of Peking's total trade with the non-Communist world, roughly two-thirds is now with the Asian-African area, and in the Far East and South and Southeast Asia, Communist China accounts for over two-thirds of the entire Communist bloc's trade. In this trade, the

Chinese Communists maintain a large export surplus, and they are steadily expanding their exports of manufactured goods -- textiles, other consumer goods, and even some capital goods. They are beginning to compete seriously with Japan and other industrial nations. Between 1954 and 1957, Communist China's trade with the underdeveloped countries of the Far East and Southeast Asia rose by more than three-quarters, at a rate over three times as fast as the increase of Japanese trade with the area.

Peking has also gotten into the foreign aid business. If one includes its aid to other Communist regimes, in fact, it is in it in a big way. Since 1953, the Chinese Communists have made more than $750 million in grants and $150 million in loans (this loan figure is incomplete, since the amount of a few loans has not been announced) to North Korea, North Vietnam and Outer Mongolia, and it has also provided $30 million plus in grants and loans to Hungary.

Communist China's aid to countries outside the Communist orbit started only in 1956, and to date it has been relatively modest. But the fact that Peking is giving any aid at all to countries in South and Southeast Asia and the Middle East is significant. All of its programs of aid to these countries fall into a definite pattern. They have been given to non-aligned nations, with the clear aim of reinforcing neutralism and building up Communist China's political prestige as well as economic influence. Totalling over $100 million, Peking's promises to these countries have not all been delivered yet, but the promises include grants totalling more than $60 million to Cambodia, Nepal, Egypt, and Ceylon, and loans totalling over $40 million to Yemen, Indonesia, Burma and Ceylon.

This year Communist China plans, according to its budget, to deliver over $250 million of foreign aid to both Communist and non-Communist countries. This is particularly remarkable in view of the fact that, as far as is known, Peking itself is not now receiving any financial aid from the Soviet Union in the form of either grants or long-term loans. It is also worth noting that the total foreign aid which Peking plans to deliver this year, if expressed as a percentage of China's small national income, takes a slice out of Communist China's economic output which is comparable to that which the United States is allocating to its foreign economic aid programs this year.

Diplomacy, trade and aid are useful to Peking in its current dealings with existing governments in Asia, but, as already stated, Peking's long-range objective is to encourage successful revolutions throughout Asia. In the long run what it hopes most to export, therefore, is revolution, and even though its general tactics of "peaceful coexistence" have forced it to play down this aim for the present, and to be discreet and covert about encouraging subversion, this aim remains unchanged.

Among Peking's various instruments for promoting subversion, the Overseas Chinese in Southeast Asia have attracted wide attention in recent years. They are certainly important, and in a few key areas they will probably be

decisive in determining the shape of the future. But their importance should not be exaggerated; in Peking's strategy toward Asia as a whole, their role is clearly a subordinate one.

There are about ten million Overseas Chinese living in Southeast Asia. With impressive commercial skills, they have acquired great economic power, and the large majority of them are unassimilated. Almost every Southeast Asian government regards them as a major problem and would like both to reduce their economic influence and to integrate them more fully into the local societies. A large percentage of the Overseas Chinese in Southeast Asia have retained ties of many sorts with their homeland, and both the Communists and the Nationalists have competed actively to obtain their loyalty. Ever since 1949 Peking has devoted major attention to the Overseas Chinese, and with the advantage of its growing power, it has had increasing success in attracting or controlling them, particularly in non-aligned countries.

In most Southeast Asian countries, however, the Overseas Chinese, as tiny minorities in the total population, lack political power, and Peking has not even attempted to organize them into a strongly subversive force in local politics. In some instances, as in Indonesia, the Chinese Communists have felt compelled, in fact, to compromise the interests of the Overseas Chinese for the sake of improved relations with the indigenous Southeast Asian leaders. Even in these areas, however, Peking has manipulated the Overseas Chinese in varying ways to serve its purposes, and they serve as valuable sources of intelligence, as well as channels for financial or other aid to local Communist and pro-Communist groups.

Where the Overseas Chinese make up a large proportion of the population, as in Singapore, Malaya, and Thailand, they are potentially a much more important instrument of Peking's influence. In all three of these areas, the local Communist movements are essentially Chinese in membership, and without any doubt Peking regards the Overseas Chinese as the key to the future of the entire Malayan peninsula. In Singapore, specifically, the political dangers which they pose are immediate. Communist-manipulated and pro-Peking Chinese laborers and students provide much of the political backing for the People's Action Party which won a landslide victory in this summer's Singapore elections; if these elements were to gain complete control of the PAP, they would undoubtedly try, in easy stages, to convert the new state of Singapore, located at the crossroads of Southeast Asia, into a political satellite of Peking.

Peking's strategy elsewhere in Asia rests far more on the indigenous Communist parties than on the Overseas Chinese. Confident that these parties will eventually gain power, the Chinese Communists constantly strive to foster and support them, as well as all forces which can strengthen them.

Although Communist China's "people's diplomacy" emphasizes so-called cultural relations, it has a strongly subversive purpose. It might, in fact, be called "overt subversion." Peking distributes an enormous amount of Communist propaganda in Asia through conventional media of communications. It has become

a Mecca for visitors from all over Asia, and has arranged exchanges of persons on a wide scale. Even more important, it has supported the establishment within other Asian countries of numerous front organizations which mobilize the support of thousands of non-Communists behind Communist-sponsored causes. Its aim in all of these activities is to foster favorable, or at least benevolently tolerant, attitudes among key groups in other Asian countries toward Communist China, toward the Communist bloc as a whole and towards local Communist movements. "People's diplomacy" aims, in short, at the cultivation of fellow-travellers and potential converts to serve both as lobbyists within their own countries for the ideas and policies of the Communist bloc and as backers of local Communist causes.

The spread of communism in Asia will not be accomplished by fellow-travelers, however, and Peking's main hopes obviously rest upon the hard-core Communist parties in each non-Communist country. Since the early 1920's, the Chinese Communists have maintained links with many of these parties, and since 1949 Peking has become, along with Moscow, a major center of guidance and support to them. During the past decade it has channeled financial support to the parties in several countries, but its major support, particularly since the worldwide shift in Communist tactics from violent insurrection to political maneuver, has been intangible rather than material. Peking has given constant encouragement and advice, and possibly training, to other Asian Communists, and the importance of these should not be underestimated. The stamp of the Chinese model for revolution has had a wide impact throughout Asia, even though the path of "armed insurrection" which Peking proclaimed a decade ago as China's strategic prescription for Asia, has been subordinated, at least temporarily.

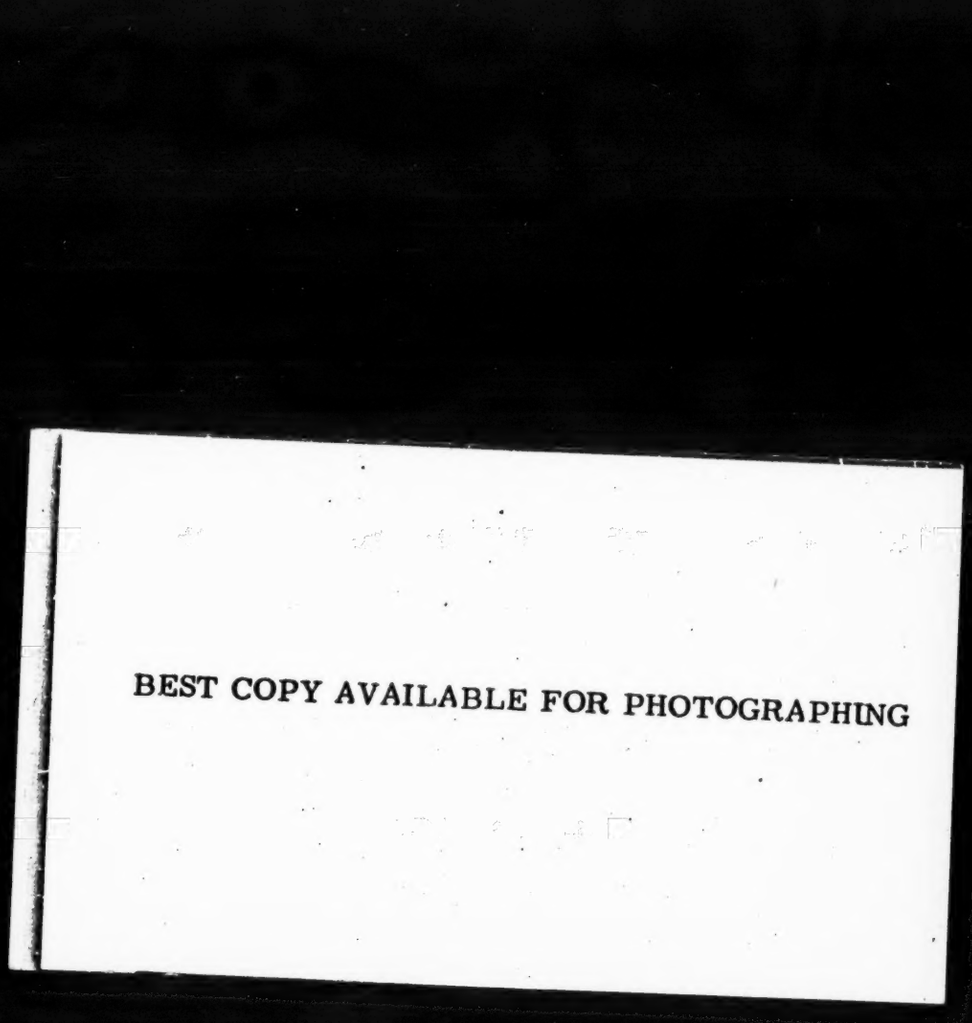
Since the Communist bloc's shift to new tactics of "peaceful coexistence," and particularly since the 20th Congress of the Soviet Communist Party in 1956 which codified this shift, Communist parties throughout most of Asia have concentrated their main efforts on parliamentary and other non-violent means of revolutionary struggle. In doing so, they have made significant gains in many countries, highlighting the fact that if Peking's ultimate aim of a Communist Asia is to be blocked, there is a need for far more than military or policy measures focused on Communist China itself. What are needed most of all are effective programs to build the non-Communist nations of Asia into viable and stable states capable of achieving their basic aspirations and of coping successfully with the problems and frustrations which lead many Asians toward communism. This means, in short, that Peking's challenge must be met by checking its vicarious influence in the rice fields of Java and Luzon, the universities of Tokyo and Rangoon, and the factories of Singapore and Calcutta.

In the past few years, the growth of Communist strength has been disturbing in many areas. In Indonesia, the Communist Party's membership is claimed to have jumped from 8,000 in 1952 to more than a million in 1957, and in the 1957 local elections, when it received 8 million votes, it emerged as the strongest single party on Java, the center of political power in Indonesia. In Laos, the pro-Communist Pathet Lao, converted into a legal party called

the Neo Lao Hak Xat, won most of the seats which it contested in the 1958 elections, adding a new political threat to the threat already posed by recalcitrant units of the former Pathet Lao army. In India the Communist Party, having doubled its membership between 1952 and 1957, emerged as the second strongest national party in the 1957 elections and won control of the state of Kerala.

In the past year or more, the growth of Communism seems to have been checked, at least temporarily, in many places. Since late 1958, non-Communist military leaders have taken control, or political leaders with military backing have assumed special powers, in a wide range of Asian countries, including Pakistan, Burma, Indonesia, Thailand and Laos. Wherever this has taken place, there has been a clampdown on Communist activities. Yet it is certainly too soon to conclude that the basic Communist threat has been substantially reduced. Anti-Communist military leaders have assumed new political importance in these countries because of a total or partial breakdown of democratic institutions and processes, and it remains to be seen whether the new regimes will be able to strike successfully at the root causes of Communist growth.

In an Asia characterized by continuing revolution and instability, as well as by an uneasy balance of power, the growing power and influence of Communist China pose a major challenge to the United States and all other nations concerned with the future of the region. The United States must recognize that it cannot avoid engaging in a long-term contest with Communist China throughout Asia, a contest which is now, and will continue to be, ideological, political, and economic, as well as military. The tasks which face the United States in this contest are formidable. In direct dealings with Communist China, it must attempt to deter aggression, avoid war, and -- to the extent possible -- reduce the present acute military tensions on China's immediate periphery. In meeting the broad challenge which Communist China poses throughout Asia, it must while continuing to preserve an adequate security system, devote major efforts to the all-important task of helping to build strong non-Communist states which can maintain their national integrity in the face of both external pressures and internal subversion. These tasks will demand a high level of statesmanship and a far larger commitment of American resources -- intellectual and moral, as well as material -- than the United States has been willing to commit so far.


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CONGRESSIONAL INVESTIGATIONS: A NEWSMAN'S VIEW

Alan Barth

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My tenure as a political scientist -- held, at best, by something approaching an imposture -- has already expired. So I shall do well, I think, to talk about congressional investigations principally from the point of view of a newspaperman.

Let me begin by limiting my subject. In order to stay within the time assigned to me, I mean to talk only about those special investigating committees of Congress which bring unwilling witnesses before them and compel them to answer questions under threat of punishment for contempt of Congress if they refuse.

Much of the essential business of Congress is conducted, of course, by standing committees before whom interested citizens solicit an opportunity to express their views. There is very little controversy over the conduct of such committees and no doubt at all as to their utility. I shall not discuss them here.

Since I intend to talk critically about congressional investigations, I had better begin by an unreserved acknowledgment that I recognize the power to investigate as an indispensable adjunct of the power to legislate, and as a power capable of rendering invaluable public service. Without the power to investigate, Congress could scarcely maintain its equal status or fulfill its vital function in the tripartite structure of the American political system.

As I understand it, the power to investigate can properly be used for two -- and for only two -- legislative purposes. The first of these purposes is to garner and sift for the legislative body as a whole information pertinent to legislation. Investigating committees serve, as Senator Fulbright put it, as the eyes and ears of Congress.

The second legitimate function of the investigating power is to enable the legislature to scrutinize the activities of the executive branch of government. Without such a check upon executive action -- that is, without the means of determining how faithfully and efficiently executive agencies discharge congressional mandates, the legislative branch would lose a large measure of its essential countervailing power in relation to the executive branch.

It is sometimes said that in addition to the gathering of information and the scrutiny of executive action, the power to investigate embraces a third function -- the function of informing the public. Perhaps it does so to a limited extent. But I do not know of any constitutional ground for this view, nor do I know of any authoritative judicial opinion asserting it.

The idea that investigating committees have a general informing function is commonly justified on the basis of Woodrow Wilson's frequently

quoted observation that "the informing function of Congress should be preferred even to its legislative function." It is important to note here that Wilson was talking about the informing function of Congress as a whole, not about investigating committees. He was talking about the importance of debating public business and airing public controversies on the floor of the Senate and the House of Representatives. And he was talking expressly in terms of the congressional authority to acquaint itself with the acts and the attitudes of the administrative agencies of the government. There is no warrant in what Wilson said for an assumption that committees may properly use their power to compel testimony in order to operate as agents of publicity or that they may undertake what the Supreme Court in the Watkins case declared to be improper -- exposure of individuals for the purpose of punishing them.

Many investigating committees have rendered vital services to Congress and to the public generally in discharging the two functions which I have said are appropriate applications of the investigating power. The investigation of the life insurance industry in 1905 by a Senate committee, for which Charles Evans Hughes was counsel, affords an outstanding example of the use of the investigating power to give Congress information requisite to the discharge of its legislative duties. The conduct of the Senate investigating subcommittee under the chairmanship of Harry S. Truman during the Second World War illustrates how effectively a congressional watchdog committee can supervise the conduct of executive agencies without impeding them unnecessarily and without trenching upon the domain of the executive.

In recent years, however, the power to investigate has been often used, it seems to me, in improper and indeed dangerous ways. It has been used, on occasion, not simply to scrutinize, but actually to discharge administrative duties within the province of executive agencies. An example of this was evident, I think, in the conduct of the Government Operations Committee of the Senate under the late Senator McCarthy when that body undertook to negotiate an agreement with a group of Greek shipowners with whom the Department of State was then actively negotiating.

The power to investigate has been used to trench flagrantly on the domain of the judicial branch of the government. Under the guise of investigation, committees have operated, in effect, as courts, putting individuals on trial -- sometimes for offenses which the Constitution has forbidden Congress to make punishable by law. Committees have judged and condemned individuals brought before them and have punished them by pitiless publicity. These committees have done this, moreover, without granting to the persons they accused, judged, and punished any of the protections of due process of law.

Some investigating committees, in addition, have extended the arm of congressional authority into areas from which the government has traditionally been excluded in the United States. They have tried to subject to congressional supervision, and indeed to a measure of congressional control, philanthropic foundations, universities, the press, and even church organizations. The management of these institutions has traditionally been kept in private -- that is to say non-governmental -- hands in the United States. Investigating committees have gone a long way toward rationalizing them, along totalitarian lines, in the service of the state.

The House Committee on Un-American Activities, the Senate Internal Security Subcommittee, and the Permanent Senate Investigating Subcommittee when it was under the chairmanship of the late Senator McCarthy have dealt meanly, punitively, vindictively, and tyrannically with witnesses called before them.

These committees have been guilty at times of pillorying men for purposes of political and personal reprisal. They have behaved at times in ways which served the aggrandizement of their members, and particularly of their successive chairmen, much more than they served the legitimate purposes of Congress. And I think it fair to say that, generally speaking, the conduct of these committees over the past decade has diminished, not enhanced, the dignity of the Congress of the United States.

Now let me turn to another aspect of the investigating process. I have come for my own part to a sober and considered conclusion, after sitting through a great many investigating hearings, that throughout the whole of recorded history, the ingenuity of men has never devised a means for obtaining information less effective than the procedure customarily employed by congressional probers. This procedure, especially when the hearing is a sensational one into which microphones and movie cameras have been lured, seems more or less like a charade designed to represent original chaos just prior to the first day.

In all too many contemporary hearings, counsel for the committee begins by asking the witness his name and address and perhaps a few questions in conformity with a prepared line of inquiry. After that, counsel is heard from nevermore. The interrogation is taken up by committee members in furious competition with each other to demonstrate their forensic and thespian abilities, and their ferocity as prosecuting attorneys. Each of them uses the ten minutes or so allotted to him without any regard whatever for questions put by other committee members and without any clearly concerted purpose. There is no pattern, no direction, no resolution of unsettled matters. The interrogation tends to be rambling, redundant and rhetorical. For the most part these hearings are not even good theater, let alone good investigation. The news that a committee of the House and a committee of the Senate are rivaling each other to investigate the late unlamented TV quiz programs opens up new horizons, however, which may make me modify this judgment.

I should like to say a few words at this point about the peculiar difficulties presented to newsmen by investigative hearings. A century or so ago, when personal journalism was in vogue, a reporter could, and did, say what he thought about the conduct of congressmen. Adjectives, even epithets, were not forbidden. And so it was possible for a newsman to convey to readers what he believed to be a true impression of an investigative hearing.

Some of the reporters who sat through the ordeal of Owen Lattimore when he was interrogated for 12 days by the McCarran Committee would have described the proceeding, had they been free to employ the style of those bygone days, as a sadistic, ugly baiting of a chained and helpless human being. Many would have characterized the behavior of Senator McCarthy in some of the hearings he conducted -- Ft. Monmouth, for instance, as the behavior of a brutal bully, as the behavior of a gauleiter or commissar rather than of a United States Senator.

But the tradition of objectivity which has so greatly improved and elevated American journalism led newspapers to report with straight faces the

testimony of career witnesses like Budenz and Bentley, like Hewitt and Matusow, just as though we believed them to be credible or even rational. Investigators skilled in the uses of publicity learned to exploit the journalistic tradition of objectivity and, through it, to make newsmen the unwitting and often unwilling executors of punishment by publicity.

The press has become somewhat more sophisticated in the last few years and no longer allows itself to be used so flagrantly for the assassination of character. The better newspapers try now to check accusations made under congressional immunity and to set them in some sort of perspective. But when one covers a hearing conducted by the House Un-American Activities Committee or by the Senate Internal Security Subcommittee one still sometimes has a sense of attending one of Senor Torquemada's interviews with some unfortunate fellow stretched upon a rack.

You will remember that several years ago, when the neurosis we called McCarthyism was at its height, a great deal was said about reform of congressional investigating procedure; and a great many codes of fair practice were introduced in both houses of Congress. Almost without exception these reforms have been filed and forgotten. The Senate has done nothing whatever to curb the abuses of investigating bodies acting in its name. The House has adopted the Doyle resolution imposing no more than a very minor restraint on its committees. The House Un-American Activities Committee and the Senate Internal Security Subcommittee continue to rove up and down the country like a couple of itinerant autos da fe, intruding their inquisitorial noses into all sorts of affairs which are none of their business -- and none of the business of Congress, either.

It seems to me unrealistic to count on the courts to curb congressional committees. The Supreme Court can sound an alarm about flagrant abuse of the investigating power, as it did a couple of years ago in the Watkins and Sweezy cases. But it can hardly be expected to ride herd continuingly on bodies which serve a coordinate branch of the government.

A good many commentators have expressed an opinion that in the Barenblatt and Uphaus decisions of last spring the Supreme Court retreated from and reversed what it had said in Watkins and Sweezy. I do not think this is quite accurate. It retreated from and reversed what the Chief Justice had said. But the Chief Justice's opinion in Watkins contained a great deal of dicta unrelated to the legal issue on which the case was actually decided. It was a magnificent opinion -- or, rather, a magnificent editorial. It would have made a marvelous paper on congressional investigations for delivery at a meeting of the American Political Science Association. But as an opinion of the Court, it said more than the Court as a whole was prepared to say -- or at any rate to sustain. It raised a mistaken hope that the committee itself could be considered invalid because of the vagueness of the House resolution establishing it.

The dissipation of this hope in the Barenblatt decision breathed new life into a nearly extinct volcano -- reviving its infinite capacity for mischief. But Barenblatt was not really a reversal of Watkins; it represented, rather, an unwillingness to face the ugly realities of what the Un-American Activities Committee is doing. Punishment by publicity has been from its inception one of the avowed purposes of this committee; and it is now the principal purpose. The committee operates as a public pillory for the unorthodox.

Mr. Justice Black's dissent in Barenblatt was, I think, one of those

rare expressions from the bench which will have an enduring place in legal literature. He exposed the real nature of the hunt for heresy spuriously carried on by the Un-American Activities Committee in the name of national security. And he brilliantly illuminated the true meaning of the First Amendment.

But abolition of the Un-American Activities Committee can come only from the House of Representatives which created it. It seems to me inescapable that we must look to Congress rather than to the courts for the governing of investigating bodies for which Congress is responsible.

Since the power to investigate is a power indispensable to the legislature, the need is to preserve that power, curbing only excesses in the application of it. It is imperative, I believe, that this be done by Congress itself -- that it be done by carefully considered rules which will respect the rights of American citizens and make the conduct of congressional committees comport with settled American traditions of fair play. Congress owes this kind of restraint to a respect for its own majesty.

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CAN U.S. AID OVERCOME ECONOMIC BACKWARDNESS?

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This is the first of three papers under the general title "Foreign Aid and U.S. Political Objectives." This would appear to be an appropriate subject for a meeting of the Political Science Association, as I take it we mean by foreign aid the gift under one name or another of national resources by the United States government to governments and private citizens of other countries.[1] Such gifts are acts of political decision, intended to achieve political purposes, and of interest to students of political behavior, scientific or otherwise.

Those who selected the topic for this panel presumably had in mind a specific set of questions: is foreign aid contributing to the political objectives of the United States in the world? If so, how much and in what ways? Could a greater contribution be made by altering the foreign aid program in size or nature? Should the objectives themselves be re-considered?

These are big questions and we must deal with them here in short compass. Furthermore, the year has already seen the customary annual series of lengthy Congressional hearings and debates on foreign aid, plus the special occurrence of a Presidential Commission on military assistance (the Draper Commission) which produced several useful reports. The subject has been well thrashed about, if not beaten to death. In these circumstances, I take it the role of our panel is not to shed a flood of new light on an obscure problem, but instead to try to distill the essence of the subject in a few pages, and point out clearly the path to improved public policy. To attempt such a task is to invite the result of being superficial and dogmatic, and while I have confidence that the other members of the panel will avoid this pitfall, I fully expect that I shall fall headlong.

The aspect of the general subject which has been allotted to me is the U.S. foreign aid program in relation to U.S. political objectives in the underdeveloped countries. Even to accept the assignment indicates a belief that something useful can be said about U.S. relations with the underdeveloped countries as a whole, or in general. I think this is true, but I also believe that anything said in a

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[1] This is not intended to be a precise definition, as for purposes of this paper one is not needed. I would include in the term foreign aid all elements of the Mutual Security Program (Military Assistance, Defense Support, Technical Cooperation, Development Loan Fund, etc.) plus the disposal of surplus agricultural products under Public Law 480. I believe this is the customary meaning of the term at present. In effect this classifies "soft loans" as a type of gift, and Export-Import Bank loans, like International Bank for Reconstruction and Development loans, as parts of the normal international capital market. This is an exaggeration on both counts, but draws the line at what seems to me the right place.

paper of this type is necessarily at such a high level of abstraction and generalization as to be inapplicable to any individual country without further consideration of its particular circumstances. I should also add that my personal acquaintance with underdeveloped countries is limited to some of those in Asia, and I can only hope that what I have to say is relevant elsewhere.

I.

In general, I take it, we would like to know how well foreign aid is serving United States political objectives in the underdeveloped countries, and whether the aid program can and should be modified to serve those objectives better. The major propositions I shall advance in this paper in response to these questions are as follows:

1. Assuming that the political objectives of the United States in these countries are what I take them tobe, namely, to promote their effective independence as nations, and to gain allies among them against potential communist aggression, it seems clear that our foreign aid has been constructive and useful in most cases, but has had no conclusive or decisive effect. This has resulted in considerable uneasiness about the future of foreign aid, both in the United States and the aid-receiving countries. I suggest that if we are serious about promoting the effective independence of the underdeveloped countries, it is necessary to adopt the objective for the foreign aid program of promoting conditions of self-sustaining economic growth in these countries. Until recently this corollary objective had not been explicitly adopted by the United States but there are signs that it is now in process of adoption.

2. The achievement by underdeveloped countries of self-sustaining economic growth can be greatly assisted by capital and technical assistance from outside, but even more important are a series of institutional changes, which are necessarily difficult and time-consuming; and in the making of which the crucial ingredient is internal leadership, both public and private.

3. To be most effective, our foreign aid should be adapted to the objective and conditions noted above: it should be planned over a long time span, fitted in size and nature to assist the programs of the recipient countries for achieving self-support, and channelled most heavily to those countries in which there is reasonably effective local leadership. Where the local leadership and planning for development are ineffective, foreign aid may be useful in preventing a deteriorating economic or political position, but will not contribute positively to achieving the objectives outlined above; such a situation emphasizes the importance, where possible, of helping to improve the leadership position in the underdeveloped countries.

4. Our military assistance program has probably worked at cross purposes with our economic assistance programs in some cases in the past. This should be rectified. The only sound basis for both military and economic aid is a development program for the country concerned which indicates by what means a satisfactory level of military strength and a satisfactory rate of economic progress can be achieved, or to put it another way, in which objectives and potential resources have been mutually adjusted.

In addition to advancing these propositions, I shall at the end raise a question concerning the long-run validity of our apparent political objectives in the underdeveloped countries.

II.

In order to consider the effectiveness of foreign aid in serving U.S. political objectives in the underdeveloped countries, we must first have some idea of what those objectives are. Those who gave us the subject for our discussion did not provide any guidelines on this point. Nor have I run across a clear and succinct official statement which seemed applicable. Consequently, the following statement of objectives is in my own words, though I believe it conforms closely to the official view of the Government. I suggest that the principal political objectives of the United States with respect to the underdeveloped countries are two:

First, to promote their effective independence as nations, which requires a reasonable degree of stability and progress in their political, economic, and social life. We hold this objective because, in our opinion, it is in a world of such nations that our own independence and free political institutions have the best chance to survive and flourish.

Second, to obtain and strengthen military allies, among the underdeveloped countries, against potential communist aggression. We hold this objective because, in our opinion, collective defense is cheaper and more effective than solitary defense.

This statement of U.S. objectives seems to me to be consistent not only with our words but with our actions in recent years. It is also supported by many statements of the U.S. position, such as that of the President in his Message to the Congress on the Mutual Security Program, Fiscal Year 1960: "I ask these funds to attain the two basic objectives of the Mutual Security Program: military security and economic and political stability and progress."[2] Nevertheless what is said in most of the rest of this paper must be understood as resting on the above statement of objectives and subject to challenge on that basis.

There is no reason to discuss these objectives at length as this paper has other purposes. One or two observations, however, might be useful to the later discussion.

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[2]The phrasing here includes Europe and Japan of course as well as the underdeveloped countries. Message of the President, March 13, 1959, reprinted in The Mutual Security Program, Fiscal Year 1960, A Summary Presentation, March 1959, published by the Departments of State and Defense and the International Cooperation Administration, hereafter cited as Summary Presentation. The quotation is from p. ix.

One observation relates to the importance of these objectives. I take it there would be general agreement that the survival and growth of the underdeveloped countries as free nations is of very great significance to the security of the United States, and warrants the devotion of large amounts of our resources -- assuming those resources could achieve some useful results.[3] The importance of these objectives is, I judge, the reason why the Congress, each year, has appropriated substantial sums for foreign aid despite its obvious doubts about the efficiency of foreign aid operations and the lack of domestic political appeal in a vote for foreign aid.

To emphasize the importance of these objectives to U.S. security is not to deny other interests that will be served by the progress of underdeveloped countries. Our economic interests will be served not only by the gains to be anticipated from larger international trade, but also by those to be anticipated from increasing the rate of scientific and technical innovation which could be expected to follow from more widespread economic development.[4] Moreover, we certainly have a humanitarian or philanthropic interest in reducing the hardship and improving the living standard of the world's underprivileged. Both economic and humanitarian interests might justify the allocation of public funds but, presumably, to a much lesser extent than the security interest cited above.

A second observation is that in general the two political objectives -- support for effective independence, and desire for military allies - provide a strong basis for the mutual interest of the United States and the underdeveloped countries. This is obvious with respect to the first objective. In wishing to promote their independence we want what they want. Neither they nor we desire to see any country -- including the United States -- exercise political control or economic domination over any of the underdeveloped countries. Independence, not subservience, is a popular objective and one that is easy to agree on.

We consider that the second objective -- desire for allies against potential communist aggression -- is also one in which our interests coincide with those of the underdeveloped countries. In notable cases (e.g., India and Pakistan), our desire for allies against communism may have led us to give less than proper weight to antagonism between adjacent countries, and what has seemed to be an expression of mutual interest to us and to one underdeveloped country has seemed like something quite different to another. We have still to resolve some of these

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[3]Professor E. S. Mason has argued very strongly the importance to the United States of the effective independence of the underdeveloped countries. See his "Promoting Economic Development, The United States and Southern Asia," (Claremont, California, 1955), and "Competitive Coexistence and Economic Development in Asia," in International Stability and Progress (papers prepared for The American Assembly, New York, June, 1957).

[4]This two-point formulation is that of Professor Kuznets, in a seminar at Harvard in the fall of 1958.

cases satisfactorily, but this is not the place to discuss them since they relate to the application of our objectives in specific instances and not to the general relationship between our objectives and the foreign aid program.

It is also necessary to recognize that there may be cases in which the two objectives conflict, at least in the short run. What are we to do, for example, in cases where our desire to promote independence and our desire to seek allies against communist aggression, point in different directions? Should we support the independence of a country and its right to choose its own government, even though that government promises to be weakly, if at all, opposed to international communism? Or should we intervene in favor of a government more strongly committed against the communist menace?

By and large, as I understand our recent history, we have chosen the former course where a choice had to be made, and have accepted (sometimes with obvious reluctance) governments which though weak on the communist issue by our standards seemed, nevertheless, to be strongly supported by public opinion in their countries. I think myself that we have been right in this attitude, and have thus preserved -- though sometimes I would gather by the thinnest of margins -- our position of standing for the freedom of every country to determine the nature of its own government. This is after all one of the major distinctions between the communist and the free worlds. The communist leaders by their actions in Hungary, Tibet, and elsewhere in recent years have found it necessary to emphasize this distinction, and it seems to me useful for us to help them do it.

The point of raising the matter here, however, is to emphasize that where there is a conflict between objectives, we have generally given priority to the objective of supporting the independence of the underdeveloped countries over the objective of seeking allies against communism. I would think this priority ranking is correct and the only way in which in the long run we can have the kind of allies we want -- that is, allies who are independent and not satellites.

III.

Assuming that U.S. political objectives in the underdeveloped countries are those I have stated above, how is foreign aid expected to advance them? Aid is ordinarily given for two main purposes: to enable the recipient country to devote more resources to economic development than would otherwise be possible, or to enable the recipient country to maintain stronger military forces than it could otherwise maintain, or both. In a broader and more formal sense, what we are doing through aid is to furnish resources to another country which allow it to enlarge its outlays for consumption, development, and defense (or any combination of the three) over what it could afford otherwise.[5] By doing this, the argument

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[5]Note the important distinction between the form of aid and its effect. The form of U.S. aid to India at present is entirely economic, but one of its effects is to help the Indian government to maintain larger military forces than it had two years ago, without reducing the development program. The reverse could be true though I do not know of a case: the U.S. could relieve a country of all or part of its military burden, allowing the country to put more of its own resources into development.

runs, the U.S. enables the recipient country to make economic progress that could not otherwise be made, or to maintain stronger defenses than it could otherwise maintain, or both, and this contributes to the achievement of the objectives stated earlier because both economic progress and reasonable military defenses are necessary to support the country's independence and (in the case of our military allies) the common defense.

The argument is surely sound as far as it goes. There are several countries whose independence, without doubt, would have been lost before now had it not been for U.S. aid, and others whose economic situation is better off than it would have been without aid -- although this may simply mean that disaster has been averted, not that economic progress has been made. In spite of undoubted achievements, however, the foreign aid program is evidently the source of continuing uneasiness both in the U.S. and abroad. I would identify at least three elements in this uneasiness. First, the Congress continues to ask how long the program must go on, and what is its goal. Second, the foreign governments responsible for requesting and receiving aid continue to be vulnerable within their own countries to political opposition based on the charge that in accepting aid the country has compromised its independence. Finally, there is something intellectually unsatisfactory, and out-of-keeping with an appropriate long-run relationship between independent countries, about a foreign aid program that seems to run on and on without conclusive results.

There are real reasons for concern here, in my opinion, and I suggest that their resolution requires that the U.S. establish an objective, corollary to the political objectives stated earlier, of promoting the achievement of conditions of self-sustaining economic growth in the underdeveloped countries -- meaning conditions under which a satisfactory rate of rise in living standards and a satisfactory level of military outlays can be maintained by each country's own resources and efforts without outside aid. Let me state the argument supporting this position with some care, at the risk of seeming to labor the obvious, because it is not clear that such an objective has been adopted as U.S. policy. The argument has three steps. What I have termed effective independence requires, first, that a country enjoy a reasonable degree of economic progress; second, that it have reasonable military strength; and third, that it support both economic progress and military strength from its own resources.

The rationale for the first step is familiar and I think persuasive. The belief is widespread among the people of underdeveloped countries that an improvement in their living standards is possible and it is a duty of their government to see that such an improvement takes place. This belief is spreading rapidly with the spread of education. It is nourished by travel and the increased flow of communications. It is explicitly promoted by the propaganda of the western countries and of the U.S.S.R., who compete tirelessly in putting forth the notion that rapid gains in economic and social welfare are the birthright of their own citizens and, by implication or explicit claim, the birthright of citizens in all other countries, too, if their governments act wisely.

I should think these forces of domestic opinion are irresistible and that governments in every country must respond. The response is plainly visible in a country like India with democratic political processes. It is also active, however,

in other types of political situations. It seems probable that the actions of General Ayub in Pakistan and General Ne Win in Burma in 1958 were taken, in considerable part, because strong groups in those countries (including the military forces) felt that the existing democratic political institutions were not bringing about as rapid economic progress as they should have been. Even in those countries where the form of government is least democratic -- such as Saudi Arabia, Kuwait, and Afghanistan -- the ruling groups are quite obviously responding to what is evidently strong pressure to improve economic conditions.

I conclude that it is true -- and will be, if anything, more true in the future -- that some degree of economic progress is a necessary prerequisite for stable political development in the underdeveloped countries. Certain qualifications should be noted.

The operational significance of this conclusion is limited, since we have, as yet, no good answers to the questions, how much economic progress is necessary, and how soon? So far as the bulk of the population is concerned, the proper concept might be "discernible" or "noticeable" progress, which might be quite low as economists measure rates of growth. A new school in the village, permitting children to become literate whose parents are not, might be very satisfactory evidence of progress to a considerable number of persons. On the other hand, there are economic sophisticates in the underdeveloped countries whose standards for a satisfactory rate of progress might be based on the desire to have a higher rate of growth than the west, and thus to close the present gap in living standards by however small an absolute amount; or, on the desire to maintain a relative rank in the periodic U.N. tabulations of per capita income in different countries; or, on the desire to show at least as much progress as China or the Eastern European countries. About all we can say at present is that the rate of economic growth must be positive, and high enough to be politically significant in some sense that as yet has no precise meaning.[6]

It is also true that there is no unique relationship between economic progress (or its lack) and political events. It would certainly not be accurate to argue that in the absence of economic growth all underdeveloped countries would at once become communist. That would undoubtedly be the result in some, and fairly soon at that, in view of the widespread acceptance, among intellectuals in the underdeveloped areas, of the idea that communist methods are an infallible means to economic progress, which are available as a less preferable alternative if other

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[6]There would seem to me to be an opportunity here for some careful and scholarly work, under U.N. or other impartial sponsorship, which would attempt to make honest comparisons of actual growth rates in different countries, to study the attitudes that people -- particularly leaders -- in different countries have toward different rates of growth, and, perhaps most important, to suggest an appropriate and intellectually defensible basis for looking at comparative growth rates in different countries. Any one who has been in underdeveloped countries in recent years can testify to the uncertainties which exist in the minds even of sophisticated leaders about these matters -- and to the difficulty of satisfying their questions in the absence of the kind of intellectual basis mentioned just above.

methods fail. But in some countries, if economic growth does not occur, the political outcome, at least at first, would more likely be tight military dictatorship and repression. The point for the argument I am making here is that neither outcome would be satisfactory from the viewpoint of U.S. political objectives. Either would represent an unstable and a potentially dangerous political situation -- although in the short run the communist solution would be worse from our viewpoint since it would mean domination of the country from Moscow or Peking, with a limited opportunity if any to reverse its choice at a later date.

Furthermore, even if economic progress is achieved it will not of course guarantee political stability. There are powerful motives other than economic which affect peoples and governments, and forces such as nationalism, religion, and ethnic distinctions may prevent a stable political development even where economic conditions are favorable.[7]

Thus far, I have argued that under modern circumstances, economic progress is necessary to the effective independence of underdeveloped countries. It is perhaps even more obvious, though (probably for that reason) not discussed so much, that some degree of military strength is also essential. It would appear likely that the need for military strength, while varying widely, is present in every country, the size of the need depending largely on the requirements for internal security, defense against possible local aggression, and potential participation in major conflict. It is hard for most of us to assess the need for military strength, because we are not specialists, and because those who are specialists usually shield their discussions with a veil of secrecy. I confess to a hunch -- perhaps a prejudice -- that military forces in a number of the underdeveloped countries at least in Asia are higher than they ought to be considering not only the requirements of the nation for defense but also its requirements for other purposes. This is to say that I think I would enlarge the degree of military risk in the interest of enlarging the resources devoted to development, but this is not a very impressive judgment since I am not well-informed on this subject.[8] Whatever one's view on this point, it is still necessary to recognize that some degree of military strength

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[7]This is one of the considerations which suggests that the U.S. foreign aid program perhaps should have an explicitly political element, whose purpose would be to assist countries to devise political institutions and methods, appropriate to their history, culture, and interests, which might meet the countries' political problems more effectively than would otherwise be the case. Speculation on this subject is outside the scope of the present paper. Stimulating observations on some of the problems of political development can be found in C. B. Marshall's testimony before the House Foreign Affairs Committee, Hearings before the Subcommittee for Review of the Mutual Security Program, January 21 and 22, 1959, and his article in Foreign Affairs, January 1959, "Reflections on a Revolution in Pakistan."

[8]A more impressive statement, if it means the same thing as my comment above (as I think it does), is that of the Draper Committee: "In some countries the Committee believes that under certain conditions there is a reasonable possibility that military expenditures by the United States or the country concerned could be reduced." The President's Committee to Study the United States Military Assistance Program, Interim Report, March 17, 1959, p. 13.

is essential and that in certain cases -- notably Korea and Viet Nam -- the costs cannot help but be high.

There would probably be little despite that both a reasonable rate of economic progress and a reasonable degree of military strength in the underdeveloped countries are essential to their effective independence and thus to the achievement of U.S. political objectives. I think we must go further, however, and aim not simply at economic progress and defensive strength, but at those conditions attained through the energies and the resources of the underdeveloped countries themselves. I would think, therefore that the proper target is the condition economists call "self-sustaining economic growth," defined as a condition in which a country through its own efforts (including its participation in the international market for goods and services and its use of the international capital market), can provide continuously a satisfactory rate of growth in income per capita for its population.[9]

The logical reasons for suggesting this target are simple. From the standpoint of the underdeveloped countries, economic independence would seem to be a necessary concomitant of political independence, and while a country could with self-respect accept help in getting started on the path to economic growth, (just as it could in restoring damage from war or natural calamities), a permanent condition of economic subsidy hardly seems compatible with independent national status. Accordingly, it would seem to be necessary for the underdeveloped countries to set themselves a target of economic self-support.[10]

Furthermore, from the standpoint of the United States and other countries which give aid, it seems unacceptable to anticipate an indefinite continuance of donations to support economic progress in underdeveloped countries, donations which might well have to rise in amount as time goes by to support a continuously rising living standard for an ever larger population. Plainly it would be preferable, and it seems to me it is necessary, to insist that aid must be related to programs for achieving economic self-support. Foreign aid, that is, should be self-liquidating. The underlying concept would be one under which, with the help of foreign aid, the underdeveloped countries one by one break out of their conditions of economic backwardness and achieve the condition of self-sustaining growth which is their objective and ours.

Thus, logically, it seems that the foreign aid program should have as one explicit objective the promotion of conditions of self-sustaining economic growth

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[9]Senator Mansfield's colorful phrase for this condition -- "economic self-propulsion" -- seems to me quite descriptive. (Congressional Record, May 15, 1959, p. 7390). The classic phrase for the transition stage is, of course, Rostow's "take-off into sustained growth." (W. W. Rostow, "Take-Off into Self-sustained Growth," Economic Journal, March 1956).

[10]It will be obvious that what I am talking about here is entirely different from what is sometimes called in underdeveloped countries "economic self-sufficiency," which means (apparently) freedom from dependence on foreign markets and foreign sources of supply. Such a target is, of course, irrational.

in the underdeveloped countries. It is not clear whether in fact the U.S. aid program has such an objective. Perhaps it is in process of adoption. The recent official presentation of the Mutual Security Program quotes the policy adopted by Congress in establishing the Development Loan Fund in 1957: "to help free peoples to develop their economic resources and to increase their productive capabilities."[11] Clearly, this is a carefully hedged statement of policy, with no refernce to economic self-propulsion. But the presentation goes on to say: "A further dimension of this policy was described recently by President Eisenhower before representatives of the nations of the Colombo Plan, when he stated that it is 'our goal ..... to enable free nations to achieve a momentum of economic progress which will make it possible for them to go forward in self-reliant growth.' Only when incomes rise to the point where further growth can be sustained through savings, conventional borrowing and foreign earnings, will the need for outside assistance from the Free World end."[12] Thus it would appear that the President has suggested the explicit objective of self-support, though it could not be described as official U.S. policy until the Congress has given some indication of approval.

There is one possible ambiguity which ought to be mentioned. The paragraph quoted above is in the section of the official presentation concerned with the Development Loan Fund, not with the foreign aid program as a whole. It is possible that the President's concept of "self-reliant growth" is somewhat different from the one I have outlined above. He may mean self-support, except for military aid, meaning that a country could support its consumption and development outlays from its own resources, but not all its military outlays, part of which the U.S. would pay for.[13]

Regardless of whether economic self-propulsion is defined to permit military aid or not, it is plainly a very high goal, and the skeptic may well ask whether, even if it is a desirable objective, it is an attainable one. This is the main issue discussed in the next section.

IV.

The argument thus far has been that one target for the foreign aid program should be to promote the establishment of self-sustaining economic growth in the underdeveloped countries. Is this in fact a feasible target? Can it be achieved in all countries? Can the United States afford to state such a target and thus

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[11] Summary Presentation, p. 56.

[12] Loc. cit. I have not had an opportunity to read the speech of the President from which this quotation is taken.

[13] I do not see how a country can be in a condition of "self-reliant growth" if the United States is paying part of the costs of its military establishment. I recognize that here I am arguing implicitly that the European countries receiving U.S. military aid are not in a situation of self-sustaining economic growth, and that we should plan for an eventual ending of the need for U.S. military aid. Both assertions are softened somewhat by the remarks in the last section of this paper.

implicitly to take at least a share of the responsibility for achieving it?

Unfortunately, we cannot appeal to historical evidence. Critics of foreign aid sometimes compare the Marshall Plan for Europe, which was a great success and virtually completed in four years, with aid to underdeveloped countries, where some hundreds of millions of dollars have been spent annually for the last five or six years and an honest appraisal would reveal few large gains in production and income per capita. Such a comparison is of course out of order. The Marshall Plan was a quick success because it aimed at restoring previous productive capacity -- and significant elements of that capacity, the skills and experience, both managerial and technical, for modern production, were in existence. What was necessary was to restore the damaged capital plant and start the flow of raw materials again, and production and income jumped back to pre-war levels.[14] The situation in the underdeveloped countries is vastly different. Neither managerial and technical skills nor capital plant exist, or have ever existed. The problem is not one of restoration, but of initial creation.

Even if we ask the right question -- how much economic creation has resulted from our foreign aid -- we encounter two large difficulties in attempting an answer. The first is that much of the aid has been spent on rescue operations of one type or another. In several cases, including Korea, Viet Nam, andIran, it seems clear that in the absence of U.S. aid there would have been radical political changes and quite likely, in some cases, communist take-overs. In other cases -- Pakistan is one -- very severe economic difficulties, including possible famine, were averted. The fact that we have conducted several successful rescue operations does not necessarily mean, however, that those countries are appreciably advanced toward self-sustaining economic growth.

The second difficulty is that we are not altogether sure that we recognize creation when we see it. While a great deal of talent has been devoted in recent years to the study of economic development, we are still uncertain in important respects about how economic growth starts, what a country has to do to break through into the stage of self-sustaining growth, and how long the break-through may take.

In these circumstances, any answer to the questions with which this section began must of necessity contain a large element of personal judgment. Recognizing this, let me state at once my own opinion and the reasons which lie behind it. It seems to me that it is feasible in the case of most underdeveloped countries to achieve a self-sustaining growth process, although it will in every case be difficult, and will necessarily take a considerable time; that the most significant element is not outside aid but internal leadership; and that this being true we should be careful to take responsibility only for assisting, and not for accomplishing, the achievement of self-propulsion.

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[14] This statement is not meant to belittle the achievements of the ERP which were great and decisive in an historical sense. Nor would it be claimed that the text is a full description of the program; fiscal and monetary policies for example were also of great significance.

In the present state of our knowledge, opinions on these questions are not, so far as I can see, subject to proof one way or another. There are, however, some theoretical reasons and a few facts behind the opinions stated, and these are set forth below.

The reasoning starts with the limited understanding we have about the process by which economic growth is begun.[15] A self-sustaining process of economic growth means not simply that the rate of growth in national income exceeds the rate of growth in population at a given point in time, but that the institutional factors in the country concerned are such as to give reasonable assurance of continued growth in income at such a rate for the foreseeable future. The institutional factors that seem to be most significant can be stated in various ways. A convenient summary would put them under three headings:

First, attitudes and institutions assuring the necessary rate of saving and investment (usually thought of as 10 to 15 per cent of gross national product);

Second, attitudes and institutions assuring the necessary discovery (or adaptation) and spread of new knowledge about production technics and other matters of economic significance; and

Third, attitudes and institutions providing sufficient incentives for, and sufficient freedom to permit, the necessary individual and group initiative.

The various attitudes and institutions just outlined do not exist (in sufficient degree) in the underdeveloped countries. They must be brought into existence, and we have historical examples of several different ways in which this has been done. The historical cases differed greatly in the degree of governmental direction (and coercion) which was used -- the range being from laisser faire England to communist Russia. Whatever the means by which they were accomplished, however, the institutional changes in all cases were large and werehighly disruptive of earlier institutional patterns. Presumably, it will be necessary, also, in all current attempts to achieve self-sustaining economic growth, to bring about large institutional changes, the specific changes required depending on the history and culture of the country concerned.[16]

Large and disruptive institutional changes are bound to be resisted, especially since many of them necessarily will be painful, involving the change or even the

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[15] What follows has been influenced largely by the ideas of Professors Mason and Kuznets, Arthur Lewis, and Everett Hagen, none of whom are, of course, to blame for my interpretations.

[16] The social violence, if one may call it that, which accompanied past instances of economic development, has often been enormous, ranging from the enclosure movement in England to the destruction of the kulaks in Russia. It would be helpful if we had some analysis and prediction by the relevant experts of the probable types and degrees of social violence that will be necessary as today's underdeveloped countries progress. Large-scale landlords are apparently inevitable victims, but what else must go?

reversal of traditional status rankings, the substitution of new values for old, and so on. Even those changes which don't cause pain to anyone's value system (for example, the establishment of a central bank) are difficult in another way in that they involve the creation of wholly new understandings and relationships in political and economic life, and such creation is also resisted if only for reasons of inertia.

These are relatively obvious points with no claim to profundity. They are perhaps enough to indicate why it appears to me inevitable that the process of economic development will be fairly slow and difficult. They also seem to me to support the notion that the most crucial factor in determining whether the growth process gets started is not outside aid but the wisdom, sophistication, and competence of the internal leadership, both governmental and private. When raising the saving rate from 5 to 10 per cent involves, as it probably does in Pakistan for example, a range of activities varying from the creation and operation of new financial institutions, through the raising (and collection) of more taxes, to the major modification of traditional patterns of celebrating marriages, it seems to me that while outside advice and outside capital may be useful, the heart of the matter is whether there are local leaders who understand the problem and are willing to undertake the arduous and often thankless tasks of dealing with it.

There is the further familiar point that, while the democratic system seems well adapted in theory to permit institutional changes to occur with the least possible use of arbitrary force and the maximum possible understanding and agreement by those affected, in practice democratic methods even in the countries where they have been used longest have sometimes had to be sharply modified in the interest of getting rapid action in crisis situations. In the face of such stern requirements as face governments in underdeveloped areas today -- the necessity for rapid institutional change, in constant tension with the strong resistance to such change - it is easy to understand the skepticism with which many persons view the prospects for the continuance of democratic governments in those underdeveloped countries which have them at all. Indeed one cannot help feeling that Mr. Nehru is continuing to display before our eyes one of the most remarkable political feats in history in managing to combine reasonably responsive democratic institutions with reasonably noticeable economic progress. While admiring the Indian performance enormously, one is inclined not to judge harshly those governments which have so far been less successful with democratic methods.

Thus far in the argument, I am reasonably confident, though resting, to repeat, largely on personal interpretation of incomplete theory. It seems fairly evident that the transition to economic self-propulsion, if it occurs, is bound to be lengthy and difficult and to depend on the quality of the country's leadership. But even granted good leadership, can it be done? I have already indicated that I think it probably can in most underdeveloped countries, but I feel much less confidence in this statement than in the ones just above. All I can offer as support for my opinion is a little dubious theory and a few inconclusive facts.

The theory rests on four propositions: first, most underdeveloped countries have some reasonable base of physical resources, at least for agricultural production (some of course are very favorably endowed); second, modern science and technology can build reasonably productive economies on almost any kind of physical base; third, the necessary institutional changes to achieve economic development have been brought about in quite a wide range of historical and social situations

in the past, and can presumably be brought about in most of the remaining kinds in the future; fourth, it seems likely that effective measures for sufficient control of the rate of population growth in underdeveloped countries will be discovered in the next few years. Granted these assumptions, it would of course follow that the transition to economic growth would be feasible in most underdeveloped countries.

I need hardly add that caliming a theoretical possibility is not the same as predicting its imminent occurrence. On the whole, however, I am not as gloomy as some observers. There is evidently some forward progress in many countries. Mr. Paul Hoffman, a distinguished observer, recently stated that "National income is increasing in the underdeveloped countries at the rate of about 3 per cent a year. But population in those same countries is increasing annually at the rate of 2 per cent. This leaves a net increase in personal standards of living of about 1 per cent."[17] These are evidently some sort of average figures which may not be representative of many individual countries. The underlying statistical estimates are in any case weak.

In addition to statistical evidence, one must weigh the spotty and uncertain results of personal observation. In my case, this is consistent with a conclusion of some definite progress. I have seen a marked change in one underdeveloped country, in four or five years, in the understanding displayed by its leaders of the problems they face. I have seen in several countries the beginning of significant institutional changes, affecting, for example, agricultural and industrial innovation, marketing systems, secondary and higher education. Above all, we have the impressive case of India which has, so far, maintained its powerful drive toward economic progress with great tenacity despite all sorts of expected and unexpected emergencies. I would not want to be marked down as sanguine of early success, but I think the chances that the underdeveloped countries will one by one achieve their break through in the next several decades have not declined in recent years -- assuming, of course, that they are given reasonable help.

V.

If the foregoing argument is accepted, what conclusions can be drawn concerning the desirability of modifying the U.S. foreign aid program?

Have we in the first place, proved too much? If local leadership and a local program for change are the crucial factors, is foreign aid necessary at all? Cannot a sufficiently determined local leadership achieve the transition to economic growth even under very unpromising conditions? The honest answer is: possibly so (barring the rare case -- Jordan, perhaps -- where the natural resources may not permit a self-sustaining growth process to be achieved for the population that inhabits the country at any conceivable level of capital investment). It might be that the communist apparatus (or any other system equally tightly in control of all available resources, and equally ruthless in exploiting them) would provide in

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[17] Mr. Hoffman went on to say, "This rate of increase is not acceptable. It is too slow -- dangerously too slow." He is probably right, but the fact (or the judgment) that per capita income is rising is itself impressive. (The quotations are from a speech by Mr. Hoffman at the annual meeting of The American Baptist Convention, Des Moines, June 8, 1959, mimeographed, p. 5.)

nearly every country a means for sufficiently squeezing consumption in favor of investment, for achieving sufficiently rapid and radical changes in the institutions for education, research, and extension, and for sufficiently inducing and controlling the application of economic resources, to achieve the transition to self-sustaining growth. We shall never be able to settle the point by appealing to past or present experience. Russia was already well along the road to economic progress when the bolshevik revolution occurred, and her achievements since then while very impressive in many ways do not demonstrate what communist methods could do with a really underdeveloped country.[18] China, while presenting the complete range of problems of underdevelopment in high degree, and meeting them with sufficient ruthlessness to satisfy a Stalin, is receiving large amounts of foreign aid from the Soviet Union, and such progress as she makes will therefore be properly attributed to foreign aid as well as to communist methods.

While communist methods might or might not be infallibly successful in starting economic growth, it is certainly much more difficult for governmental systems less autocratic and less ruthless than communist ones to make headway, and this is one of the two main reasons why substantial foreign aid from the United States is necessary.

A government as strong and as intelligently led as that of India might manage very slowly to lift the country's economic level without outside aid. But it would certainly be touch and go (especially in the absence of effective means for family planning), and would undoubtedly require much tighter and more restrictive government controls than they or we would like, with the ever-present possibility of further major gains by the Indian Communist Party. With substantial outside help in the form of both technical and capital resources, the prospects for success in economic development are far brighter, and the degree of governmental coercion can be substantially lessened.[19] We can and should ask the Indian Government and other governments so situated to lead their countries in very strenuous developmental efforts. But we should also be generous with our aid.

The second main reason why aid is necessary is the extremely significant test of methods which is seen by Asians generally as taking place in the comparison between India (and other free Asian countries) and China. As indicated earlier, there is already a strong conviction among intellectuals in Asia that while communism has many drawbacks it is an infallibly successful means for economic development. If China's economic progress is substantial and steady over the next few years and that of India is negligible, there is likely to be an enormously significant shift in the attitude of Asian intellectual leaders. For the United States to assist the prospects for economic development under free governments by providing substantial foreign aid where it can be useful, reflects only the most

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[18] See Oleg Hoeffding, "Soviet State Planning and Forced Industrialization as a Model for Asia," RAND Corporation, 1958.

[19] I am not concerned here with the volume of outside resources needed or the desirable mix between technical and capital assistance which will vary from country to country. Some fortunate countries, notably those with large petroleum deposits, may need little outside capital.

elementary instinct of self-preservation.[20]

Assuming that foreign aid is continued on a sizable scale as I believe it should be, it should plainly be organized and directed in as efficient a manner as possible. The argument of this paper suggests certain guidelines for the better planning and administration of the foreign aid program. Three of the main guidelines would appear to be that the aid program should be planned to continue for at least twenty years and not extended for one year only each year; that U.S. aid should be planned to fit the development effort of the recipient country; and that U.S. aid should be concentrated in those countries where the local leadership for development is strongest.[21]

I will not expand on these points at any length as they are reasonably self-evident. What has been said above about the nature of the transition to economic self-reliance indicates that it will normally be a matter not of a few years but a few decades during which a country is in the transition stage. Whether or not foreign aid is necessary for the entire duration of the transition period, it will be necessary (in those cases where it is necessary at all) for a period of years and we simply tie our own hands by conducting the foreign aid program on the basis of annual authorizations. I take it that everyone except possibly the United States Treasury Department is now agreed on this point.

In addition, I take it that nearly everyone is now agreed that the proper way to organize our aid to a given country is to fit it, in size and nature, to the plan or pattern of development which is under way in the country. There are two points of operative significance here. First, our aid should be planned to support their development program. If we don't like their program, we can try to get it changed, or we can decide not to give aid, but we cannot usefully attempt to draw up an independent and rival development plan for a country; we must follow theirs or the result will be chaos as it occasionally has been in the past. Putting the same point in a positive rather than a negative way, it is in the U.S. interest to try to work with the appropriate authorities in a country in drawing up their development plans; the ideal is a product with which the U.S. fully agree.

The second meaning of fitting our aid to their situation is that the various elements of our aid program should be coordinated in amount and nature both with each other and with the resources and commitments of the recipient country. There

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[20]The above argument for foreign aid is of course not meant in any way to disparage other elements in our foreign economic policy -- notably our policies toward foreign trade and toward investment abroad, both of which are of great significance to the underdeveloped countries. These policies need to be improved, and far better coordinated with our aid policy. But the present paper concerns aid, not trade.

[21]Numerous improvements in the foreign aid program should be made which are not mentioned in this paper because they have nothing to do with the line of argument being pursued here. For example, I believe there should be a major decentralization of responsibility and authority from Washington to the various country missions, but this view rests on considerations of administrative efficiency which are not relevant to the present paper.

seems to have been some uncertainty on this point when the Development Loan Fund was established and began to examine and make decisions on individual projects, ostensibly without considering the total volume of resources committed to a country or their time of transfer. This attitude may have been based on a misunderstanding of the method of operation of the International Bank,[22] but in any event the D.L.F. now seems to have developed a satisfactory method of operating on individual project applications within approximate total figures for the country. The controlling concept for the D.L.F., as for other types of foreign aid, should be not only the excellence of the individual project, but also the excellence of the national development effort, public and private, within which the project takes its place.

The last guideline suggested above was that foreign aid should be concentrated in those countries where there is effective leadership and effective action toward economic growth. The reasoning is simple. If there is no effective process of institutional change going forward in a country, then large amounts of foreign aid could be poured in, which might have a temporary effect in alleviating economic difficulties or raising consumption standards, and yet have no lasting effect in starting a growth process. Only when there is effective local leadership, and a program of action for bringing about the changes that are needed, can foreign aid be effective in helping to overcome economic backwardness.

Unfortunately, actuality is not so simple. What about the "gray" cases in which the local leadership and planning for development are mediocre, and no very promising results seem to be in the making? What about the cases in which the local leadership is inadequate, but the most likely alternative leadership would be worse? Not only are these questions difficult in themselves, they may be complicated by the fact that the country concerned is allied with us in a common defense arrangement, which leads to special claims for assistance.

I know of only two points to be made in general about these problems. The first is that it may, of course, be wise in some cases to provide foreign assistance to a country to help prevent the situation from getting worse. We should, however, recognize (at least privately) that aid in such circumstances is not contributing to the achievement of our objectives, and that we as well as the country concerned are in an unstable situation which should be changed as soon as possible.

The second general point is that where the local leadership is inadequate, it is obviously to our interest to help improve the leadership position if we can. This may conjure up pictures of puppet governments, which as I have already indicated I regard as quite out of keeping with U.S. political objectives. But this is not what I have in mind. It seems to me there are several ways in which the U.S., while maintaining an entirely correct relationship toward the choice by a country of its own leaders, can yet attempt to influence the situation in desirable directions. These are: to seek out and support individual and local situations

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[22] Which has always been very sensibly concerned not just with individual projects but with the over-all prospects of the borrowing country. See Alec Cairncross, The International Bank for Reconstruction and Development (Princeton University Essays in International Finance, No. 33, March 1959).

where there is good leadership; to improve the opportunities for the education and training of future leaders; and to attempt to influence present leaders.

In the first instance, in nearly every country there will be individual cases where effective leadership exists and progressive things are being done. Outside assistance may well be very useful if related to such cases -- a particular business venture, or training institution, or government agency. Successful individual projects may not only be valuable in themselves, but even more valuable as examples of the kinds of changes needed in the country. Isolated projects, however, will not ordinarily go very far toward starting a development process.

Second, it is plainly of great importance for the U.S. to consider what it can do to help train future leaders in the underdeveloped countries. This is an area in which, as an amateur observer, I think U.S. aid policy is seriously deficient, and a good deal of study is needed particularly of what our objectives ought to be and the best methods for reaching them. The following random observations are intended to indicate some of the lines of investigation that might be fruitful; they do not purport to offer solutions.

1. For the past thrity years or more, the Soviet Union has conducted an organized program for training future leaders in underdeveloped countries. I assume that the students of Soviet affairs have analyzed the process of selection, the type of training given, the results achieved. Presumably, the kind of leadership training in which we are interested would have very different purposes from that of the Soviet Union, insofar as they wish to turn out dedicated professional members of a standardized cadre, subservient to the headquarters of the international communist movement. But we might, nevertheless, be able to learn something from their system if we become seriously interested in leadership training.

2. Some of the notable leaders in the underdeveloped countries today received training in U.S. or British universities -- Diem, Nehru, and Nkrumah are obvious illustrations. How significant has this training been to them? Should other young men from these countries be enabled to receive similar experiences, or is this an out-of-date training pattern with larger and better universities coming along in the underdeveloped countries themselves? How do you balance the potential gain from training another Nehru against the substantial drain of talent which occurs as a result of foreign training, with bright young men and women once trained wanting only to stay abroad permanently? These are questions which could be investigated without too much trouble,[23] and on which the views of present leaders in the underdeveloped countries could be sought.

3. Hundreds of today's leaders in private and public life in Middle Eastern countries received college training at the American University of Beirut, for decades the outstanding western-oriented university in a large geographical area. I am not aware of a scholarly attempt to weigh the results of A.U.B.'s work, and clearly it would be a task of great difficulty and subtlety. Casual conversation over several years with graduates and faculty members, however, indicates that its

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[23]Some research has been done already. See, for example, Lambert and Bressler's Indian Students on an American Campus (University of Minnesota Press, 1956).

influence has been very great in inculcating both knowledge and attitudes favorable to economic growth. However, the system of an "American" educational institution established in other parts of the world probably has seen its time, and we should not look for more, even though A.U.B. (and similar institutions) may well continue to be very significant for many years yet.

4. Under present circumstances, the elements of pride in national independence, the large numbers of students to be trained, and the related services (besides training) that can be performed, indicate that the most logical solution for training leaders is to build up the universities in the underdeveloped countries. This is a task, however, which faces great difficulties even under the best of circumstances and may actually itself have to wait for better leadership before anything significant can be done. Even where there is some desire to accept assistance toward change, the problems are large, not the least being that the concept of a university and its functions are different in different countries of the western world, and that the universities in the underdeveloped countries often have solidly-established traditions stemming from their own cultural heritage or colonial background or both. In these circumstances, to modify the universities in the interests of training more and better leaders is no mean target. Under the technical cooperation program, more than 50 United States universities have contracts to work in underdeveloped countries, and a considerable number of these cases no doubt involve attempts to improve the quality of teaching and research in universities there.[24] I have personal acquaintance only with a handful of these cases in four or five countries, and have made no careful studies, but I would not be surprised if in most cases the impact of U.S. assistance on the foreign university has been moderate rather than marked. This is not to imply that the effort is misguided, but only that it is necessarily difficult and time-consuming and, I suspect, that we have much to learn about how to do it effectively.

Third, in addition to training future leaders it is of course desirable so far as possible to influence the behavior of present leaders in ways favorable to development. This is evidently a matter of some delicacy as sensitive elements of national policy are necessarily involved, but at least two methods have proven useful on occasion.

Policy advisers particularly on the more technical aspects of development have sometimes been quite useful, though sometimes also quite fruitless. They seem, generally, to be more acceptable if they come under neutral auspices, and this is probably one of the major opportunities of the international agencies and of the Foundations.

Furthermore, it is possible, and in my opinion desirable, to put various types of conditions on the offer of aid. A claim seems to have grown up that aid should be offered "without strings," but I take it no one means this literally and that what is actually involved is a question concerning what sort of conditions are properly, and what sort are improperly, attached. Without trying to provide a complete answer, it seems to me eminently proper to attach such conditions affecting the development policy of the recipient government as may be defensible by technical experts as leading toward self-sustaining economic growth. What can actually be

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[24] Summary Presentation, p. 54.

accomplished in this way will vary from one situation to another. Furthermore, it may be most effective for the U.S. government not to play bellwether but to follow the lead of the International Bank, which has often attached to its loans very significant conditions concerning the economic policies of borrowing governments.[25] But, however it is done, it seems to me to be clearly desirable to put "strings" on foreign aid when and as they can be expected to do some good.[26]

All the above steps may be useful in those cases where national leadership for development is defective. The U.S. can seek isolated instances of effective leadership; it can help train future leaders; and it can try to influence present leaders. The fact remains, however, that there are numerous countries, at present, and undoubtedly will be numerous countries for some time to come, in which local leadership for development is not effective, and in which we cannot expect significant progress toward overcoming economic backwardness. Some amounts of foreign aid in such circumstances may be useful as stopgap, as incentive, or for other reasons. But we should not expect, in such circumstances, that foreign aid is advancing us rapidly if at all towards our political objectives -- only that it may be preventing a further retrogression from them.

VI.

It may be well to add a few words about military aid, in order to make explicit what has been implicit thus far.

If the view is sound that U.S. foreign aid should be aimed at helping underdeveloped countries achieve economic self-support, meaning conditions under which an acceptable level of military strength and an acceptable rate of economic progress are achieved, then both U.S. military and economic aid should be adapted to this end. Both, that is, should be based, for any country, on a combined program showing anticipated resources, from all sources domestic and foreign, and anticipated commitments for consumption, defense, and development. Only against such an analysis can we be sure that the resources provided by the U.S., whatever form they take, will make a maximum contribution to progress toward self-sustaining growth.

In the past, this practice has not always been followed with respect to U.S. aid to underdeveloped countries, and there have undoubtedly been cases in which U.S. military aid has been negotiated on a basis which committed the recipient country to such large defense expenditures as to set back seriously the same country's development effort. This is, perhaps, not surprising in view of the relatively brief experience we have had with foreign aid, and the responsible officials are clearly intending to prevent such occurrences in the future (though this intention may be hampered by the forthcoming shift of more control over military aid to the Defense Department). It is also true that U.S. officials cannot by themselves assure that military aid and economic aid are complementary, as this requires that the development and defense policies of the recipient country should be mutually adjusted and

[25] See Cairncross, The International Bank for Reconstruction and Development.

[26] In cases where the local leadership is effective, the need for conditions on aid is greatly diminished. In such cases, the recipient country will be organized to make the best use of its own resources, and will normallly be prepared -- indeed will be eager -- to make the best use of any additional resources available from the outside. Roughly speaking, therefore, the desirability of "strings" will vary inversely with the effectiveness of the governmental development effort in the country concerned.

based on a common program for the country's progress, and this is not always easy to achieve. But the integrity of the concept must be insisted on, and officials of both the U.S. and recipient countries educated to work toward it, for only on this basis can foreign aid be efficient.

VII.

In this brief, opinionated, and highly selective discussion, I have argued that if the U.S. political objectives in the underdeveloped countries are to promote their independence and strength, allied where appropriate with ours, a corollary objective should be to help them achieve a situation of self-sustaining economic growth; that this is necessarily a long and difficult task requiring major institutional changes which can only be achieved through local leadership, with foreign aid playing a supplemental though probably in most cases an essential role; that the U.S. foreign aid program should be modified to cover a longer time span, to fit aid more closely to the development programs of recipient countries, and to concentrate aid most heavily where local leadership for development is best; and finally that while it may be necessary to furnish aid where leadership is not effective, we should not expect permanent gains under such circumstances, and should do what we can to help improve the leadership.

All this seems to me to hang together reasonably well, or at least to fit the preconceptions I acquired in Asia. Before leaving the subject, however, I would like to express very briefly a few qualms about the validity of this policy framework for the long haul. My doubts, which are nebulous rather than clear, seem to center around the question whether the objective of working for the effective independence of the underdeveloped countries, which I believe is now the heart of U.S. policy toward these countries, will in fact be sufficient in the long run. The following points worry me in smaller or larger degree.

1. In many cases, perhaps nearly all, it seems likely to take a matter of decades before conditions of self-sustaining economic growth could be achieved in the underdeveloped countries. This seems rather a long time for conditions of economic dependence to continue without leading to various types of political upheavals contrary to the long-run interests of the free world. Perhaps this is nothing to worry about. The case of the Philippines might suggest that a calm attitude is indicated.

2. Even when the underdeveloped countries have entered the charmed circle of economic self-reliance, there are likely still to be enormous disparities between rich and poor countries. If, for example, India succeeds in achieving a growth rate of two per cent per capita annually for the next 35 years -- which would be a very great achievement -- per capita income would be approximately doubled over present levels, from about $60 to $120. During the same period, per capita income in the U.S. seems likely to rise from about $2,000 to $4,000. Recognizing the severe qualifications applicable to such comparative figures, the orders of magnitude seem significant. Such disparities may well result in powerful urges to accomplish some short of equalization, of the sort which has taken place in most western countries in recent decades. Accomplishing this within a country, where the political system permits expression to conflicting interests, and where internal migration permits individuals to seek areas of higher income, is obviously a wholly different thing from accomplishing it internationally. At the least, the resolution of this problem

might require a longer extension of foreign aid. Possibly, it might be one of the elements pushing the further development of the United Nations as international government. In any event, it might raise some doubt whether independence is a sufficient objective for the underdeveloped countries.

3. The success of the Marshall Plan in restoring pre-war production levels and economic viability in Europe has not yet resulted in eliminating the need for military aid. The Ruropean countries are not in fact effectively independent in the sense in which the phrase has been used in this paper, but as members of NATO they receive continuing help in maintaining larger defense forces than they could maintain alone -- at least without cutting down their rate of economic progress. What is the future of this arrangement? Is it a desirable and a stable situation in the long run? Will the NATO countries gradually cease to require military aid? Or perhaps the position is different from what I have described, and what is called military aid is in fact only our contribution, matched or more than matched by the contributions of others, under some sort of rudimentary Atlantic regional government? In any event, the European case may not augur well for the eventual ability of the underdeveloped countries to stand on their own feet.

4. Finally, economic federation is being pushed in various forms and in various groupings in Europe, and enthusiasts are already looking forward to the day when the U.S. will join.[27] With economic federation comes normally and necessarily some sort of political association, so that the different European groupings in one sense appear to be moves in the direction of common government. Under such circumstances, the problems of economic growth and economic disparities, to a significant extent, become joint problems, not independent ones.[28] If the concept of economic federation is valid in Europe, is it also valid elsewhere, and if so, whould the objectives of the U.S. in the underdeveloped countries be augmented appropriately?

It will be clear that these various questions and doubts relate primarily to the conception of future international relationships which ought to underlie our policies toward the underdeveloped countries, including our foreign aid policies. Perhaps the papers that follow will shed further light on these matters.

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[27] See for example Will Clayton's letter to the editor, New York Times, August 2, 1959.

[28] During the summer of 1959 when the writer was in Greece the association of that country with the six Common Market countries was being negotiated, and one of the assumptions on which the negotiations were proceeding was that safeguards had to be devised to make sure that when Greece entered the Common Market her industrial development was not halted by exposure to the competition of the more advanced industrial countries among the Six.

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A SIMPLE DIPLOMATIC GAME, or Putting One and One Together

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Growing interest has been expressed for the past several years by a small number of international relations scholars in the possible application to their field of high-speed modern computers. The possibility is made more reasonable by an accumulating mass of quantitative data about the world society. The model described here is a computer simulation program, suggested as a modest beginning effort, and designed to reproduce in simplified form a number of features of the international political system. It does not attempt to reproduce all aspects of actuality, though it does make use of available data which while obviously not fully descriptive of the real universe, approaches closely the maximum storage capacity of the 2000-space drum of the IBM 650 Stored Program Computer. The programmer does not presume that the model has any utility for prediction, but hopes it may be capable of testing the validity of certain sweeping generalizations often made subjectively about the international behavior of states, especially when such statements are based on the same data as employed in the program.

The phrase "simple game" may be deceptive; "game" refers to the most elementary possible level of game theory, "simple" to the simplicity of this level of mathematics. The program was not designed to be "played" as a game, though a recent modification will now make that possible as an alternative branch at the end.

How the Stored Program Works

Once the program has received and processed the data which define the characteristics of the states comprising the program's universe, it is

ready for the action portion of the game. The model employs nine actor states, nine target states, and nine intensity levels of action. The nine actor states used initially are the nine major powers of the actual scene: The United States, Britain, the Soviet Union, Western Germany, France, Italy, India, China, and Japan. The nine target states are chosen from recent tension areas: Korea, Guatemala, Egypt, Lebanon, Hungary, Vietnam, Taiwan, Indonesia, and Iran. However the data on both actor and target states--particularly the latter--are easily modified: one could either substitute other specific states or set up a universe of hypothetical states by changing the data cards which relate to them.

The nine intensity levels of action are named only for fun: they actually are defined in the program as representing from ten to ninety percent of effort. To make these intensity levels more vivid, the program uses alphanumeric codes roughly corresponding to a scale of increasingly serious action:

Intensity	Action	Alphanumeric Code
.100	Diplomatic protest	KICKS
.200	United Nations action	UNAXN
.300	Severing diplomatic relations	SEVER
.400	Propaganda-subversion campaign	SUBVT
.500	Boycott and/or reprisals	PRISL
.600	Troop movements	TROOP
.700	Full mobilization	MOBZN
.800	Limited war	WARLT
.900	All-out war	HBOMB

On one action cycle the following occurs:

1. The action card is entered in the machine as a "play". It informs us that a certain large state has taken an action of a given intensity level against a certain small state, or target. Thus the phrase "The United States has acted at an intensity level of sixty percent against Lebanon", will be expressed in numerical language as "0000000001 0000000600 0000000004", wherein "1" is the code number for the actor, "600" the

designation of intensity of action, and "4" the code number for the target. By use of the alphanumeric device the machine will actually print out "U S A TROOP LEBN" to indicate the nature of the initial action.

2. Following the action card, the program automatically selects a logical counter-action for each of the other eight large states in the universe. These are printed immediately below the line which describes the original action. In selecting the counter-actions the program makes use of the original fund of descriptive data and follows the basic assumptions or rules set out below.

3. After the choice of counter-actions, the program recomputes the relative strength of the nine actor states and assigns them new war potential indices. By comparing these with the original set, gain or loss from the cycle of activity is revealed.

4. At the choice of the user of the program, the action cycle may substitute the modified indices of power distribution resulting from the previous play for the original set, and use them as the basis for the selection of counter-actions. This possibility gives a mildly stochastic touch to the program, since the new array may also change the rules for selection of counter-actions in a so-called "nature of the universe" branch, and in that coalition strength and leadership may also be changed.

5. Also at the choice of the user, the program will hold the results of two successive cycles and compare them for relative advantage or disadvantage to the actor state or states. By this choice two persons or teams might operate the program as a competitive game, though this feature is intended to make possible the exploration of alternative strategies rather than simply to entertain.

6. Finally, a program section has been prepared, though it will not be incorporated into the original set of instructions, whereby the machine

itself is made the second player in the competitive game. Since in this branch it would explore all possible combinations of actions and counter actions, some 600,000 discrete steps would be involved, and more machine time required than is justified at this stage of development.

Assumptions of the Model

Certain features of international political action which are fairly widely accepted as standard are incorporated into the program. Since these may be considered in a way the rules of the program, they are set forth here in some detail.

1. The concept of national power as expressed in terms of war potential. In the program the war potential index of each major state is expressed as a percentage of total power in the universe of nine actors. It is derived from raw data on military age manpower, transportation, gross national product, gross national product per capita, energy production, steel production, literacy, and atomic capability. A weighting scale is provided as input data so that it can be modified with experience; it makes possible, incidentally, retention of the actual statistics in these categories rather than use of derivitive indices.

2. The concept of power distribution as a determinant of action. If power distribution is even to a given degree the universe of action is defined as one of balance of power. If two coalitions are dominant to the extent of controlling 75% of the power, the universe is called loose bipolar. This boundary is less arbitrary than it seems, since at that point the third force or forces could combine with the second strongest group to equal the strongest. Finally, if two coalitions are dominant to a marked degree--controlling 90% of the strength--the universe is tight bipolar. These categories follow Kaplan, though not precisely.

The effect of the nature-of-the-universe branch is essentially to modify the counter-action cycle. The following distinctions are made:

a. In a balance-of-power universe each state will select a counter-action to equalize its relative loss, regardless of coalition arrangements, except that war against allies is excluded.

b. In a loose bipolar universe, each state will act to redress its absolute loss and the bipolar leaders will act to redress their relative loss.

c. In a tight bipolar universe only the bipolar leaders will act, other coalition members merely supporting. Neutrals are still permitted in the model's definition of tight bipolarity; these will act to redress their absolute loss.

d. Computation of coalition strength and leadership, and of the nature of the universe which depends on this computation, follows the entry of the action card. This means that it is possible for the nature of the universe to change in the course of play, as successive actions and counter-actions result in modifications of relative strength among the actors.

3. The concept of interest as a determinant of action. Counter-actions of the states are selected at an intensity level determined among other factors by an index composed of four indicators of interest: trade, coalition membership, presence of absence of military bases of the actor in the target area, and geographic proximity. This "interest index" is based on elementary if rigid assumptions: that the degree of interest of one state in another varies directly with the ratio of mutual trade to total trade and inversely with distance, and is heightened by alliance and by possession of military bases in the second state. The program employs the interest index to determine the loss which the counter-actors suffer and the gain to the originator of action. The war potential of the state

is multiplied by the product of the interest index and the intensity level of the action; the result is treated as gain or loss. For example, if the actor employs action level .600 against a target, and its interest index in that target is .5, it is deemed to have gained .3 of its own war potential. A similarly interested counter-actor is deemed to have lost .3 of its strength.

Two other computations further modify this result: the actor is penalized by a "cost" figure, which estimates the potential expended in the action, and the counter-actors are given the advantages presumed to flow from the counter-actions. The net result of the cycle is likely to favor the originator of action, but by no means is this certain. The actor may well lose, for example, if he acts with strong intensity in an area in which his interest is low (where, in plain words, he has no business), since such action will elicit strong counter-actions from states with stronger interest. Actual formulae used in the program are appended to this paper for closer examination.

4. <u>The concept of internal socio-economic patterns as partial determinants of action</u>. These data are roughly related to the areas of research of sociologists and social psychologists, and are combined into a so-called "propensity-to-act" index. At the same time, the input data used to compose this index are subject to indefinite revision in future as or if they become more reliable. Meanwhile the influence of the propensity index on choice of counter-action is somewhat sluggish.

Initially the data used are selected from Quincy Wright's suggested axes of energy-lethargy, flexibility-rigidity, cooperation-isolation, strength-weakness, resource abundance-poverty, and technological advancement-backwardness, from his capability field; and objectivity-subjectivity, liberality-restrictiveness, and affirmation-negation, in his more subjective

analytical field. Since Wright's own data were reduced to indices expressive of an overall tendency toward aggressiveness if negative, or toward "civilization" if positive, the plus and minus signs are reversed in the program, so that the higher index represents a tendency toward stronger action. These data are among the more dubious used in the model, and their effect is minimal. The propensity test is applied following the selection of counter-actions in all branches of the program. If the state's propensity-to-act is below average the intensity level of the logical counter-action is reduced by one; if the index is less than half the average, the counter-action drops two levels. A weighting scale is also provided for future use, though initially it is set to deem all the data of equal importance.

5. The concept of constant change in the relative strength of states composing the international universe. The program is so arranged, as stated above, that determination of counter-action may be based either on the status quo data or on various modifications of the status quo data resulting from any number of previous actions and counter-actions. As a result, though the nine actors, nine targets, and nine intensity levels of action, combine into only 729 action cards, each resulting in the selection of eight counter-actions by the other eight states, this same variety of action cards may also be employed in a stochastic branch wherein the modified data on strength distribution, coalition leadership, and nature of the universe are capable of infinite modification by successive actions.

Flexible Features of the Program

Despite the rigidity of rules required by the computer, several aspects of the program permit relatively simple modification.

1. First, there are the obvious modifications of data provided for by the program itself. These include changes in the data from time to time to keep them current, changes in the weights assigned the various indicators by substitution of a new weight card, changes in the atomic capability list as other states acquire the bomb, and changes in the actors and targets by suitable substitution of data relating to them. Thus, the wealth of information now available on the outbreak of the first World War could be used as input to recreate the universe of 1914.

2. Secondly, without reprogramming, alternative types of data could be substituted for the categories now used to define the characteristics of the program's universe. For example, the "propensity-to-act" indices could be abandoned completely and a new set substituted, using such data as Deutsch's on communication, some adaptation of Landau's hierarchy index, Asch's concept of an index of desperation which increases as the limits of a state's reserve strength is reached, vectors of growth or decline in various characteristics (as suggested by Wright), or raw data on social behavior patterns thought or found to be indicative of national action--such as murder or suicide rates, economic class composition, or measures of social integration, disorganization, or tension. Travel data, an obvious ingredient of a complete "interest index", might be meshed with the present data on trade, alliances, and bases, to give a more inclusive indicator.

3. Finally, provision has been made for the possibility of reprogramming sections of the model without the necessity of changing other portions. The program has been broken down into six test routines for "debugging". These are tied together again by devices fairly easy to untangle. This will expedite any modification of the several formulae which control selection of counter-actions and which are used to compute gains or losses resulting from action cycles. Where distance enters as a factor, for example,

its influence is now handled as directly proportional; should further investigation show that some version of the inverse square law would give more realistic results, only slight adjustment of the program would be required.

Conclusion

Stylized and arbitrary though a computer simulation program must be, it offers certain advantages over similarly stylized and arbitrary approaches of a more traditional and literary sort. Modern high-speed computers can handle all data which can be reduced to numbers with remarkable speed. They can correlate, work regressions, solve matrices, and do similar workaday mathematics, in a matter of seconds. Moreover, since they work only with numbers--and the simplest of logic--their use requires specificity to a degree not always deemed possible (or respectable) in political science. On the other hand, far from being the super-brains of the Sunday supplements and science-fictions, they quite literally can do only, if exactly, what the programmer dictates: repeat, exactly what the programmer dictates. If the programmer sets an endless loop, the computer will moronically repeat it endlessly or until the power breaks down. (There are some ninety-five loops in my program, so I speak with authority.)

Models such as this should permit certain meaningful use of the resources of statistical data now available in international studies, and which are now given relatively slight attention. To be sure there is a great deal we do not know, and perhaps will never know, about the behavior of entities in the international scene. Admission of this ignorance, or even of its invincibility, should not deter the scholar from working with the more restricted (but still abundant) supply of information he actually has at hand.

Finally, one might challenge briefly the sometimes voiced view that human and social studies deal with so nearly infinite a variety of circumstances that no useful manipulation of social data is possible or should be attempted. Refinement of typologies and taxonomies may well reduce the dimension of this variety, and even infinities have been met and to some extent handled by the physical sciences. At any rate, this very variety suggests the desirability of more investigation of computer programming as an approach to dealing with the sheer bulk of data now emerging in ever-increasing quantities.

Appendix

1. Specifications of Data Cards Employed in the Program

CARD CODE	DATA SUB-CODE	TYPE	NUMBER OF ITEMS
Descriptive Data:			
101	1	Military age manpower	9
101	2	Transport	9
101	3	Gross national product	9
101	4	GNP per capita	9
101	5	Military budget	9
101	6	Energy production	9
101	7	Steel production	9
101	8	Literacy	9
101	9	Atomic production	9
105	-	War potential index weights	9
102	1	Energy-lethargy index	9
102	2	Flexibility-rigidity index	9
102	3	Cooperation-isolation index	9
102	4	Strength-weakness index	9
102	5	Resource abundance-poverty index	9
102	6	Technical advancement-backwardness index	9
102	7	Objectivity-subjectivity index	9
102	8	Liberality-restrictiveness index	9
102	9	Affirmation-Negation index	9
106	-	Propensity-to-act index weights	9
103	1-9	Military bases abroad data	81
104	1-9	Mutual trade data	81
107	-	H-Bomb capability data	9
108	1-18	Total trade data	18
109	1-18	Coalition membership data	18
110	1-36	Location data (Long., Latitude)	36
111	1-10	Coalition composition codes	10
112	-	End-of-data card	1
Action Data:			
113	0	Action card, Status Quo	729 (possible)
113	1	Action card, Stochastic	729 (possible)
113	2	Action card, Competitive A	729 (possible)
113	3	Action card, Competitive B	729 (possible)

The descriptive data is loaded more than one item to a card; actually 126 cards are used for the 433 discrete items of information employed

2. Formulae Employed in the Program

War Potential Index

$$W_i = 100 \frac{\sum_{j=1}^{9} D_{j_i} Wt_j}{\sum_{I,I}^{9,9} D_{j_i} Wt_j} \qquad (1)$$

W_i is the war potential index of any given actor state.
D is any discrete item of data used to compose the war potential index.
Wt is the weight attached to a given category of data.

Propensity Index

$$X_i = \frac{\sum_{1}^{9} D_j Wt_j}{9} \qquad (2)$$

X_i is the propensity index of any given actor state.
D is any discrete item of data used to compose the propensity index.
Wt is the weight attached to the category of data.

Interest Index

For neutrals without bases: $I_{i-j} = \frac{T + P}{3}$ (3)

For allies and states with bases: $I_{i-j} = \frac{T + P + Cl + B}{4}$ (4)

I_{i-j} is the index of interest of large state i in small state j.

T is the average percentage which mutual trade constitutes of total trade in the two states:

$$T = \frac{\frac{T_{i-j}}{T_i} 100 + \frac{T_{i-j}}{T_j} 100}{2} \qquad (5)$$

where T_{i-j} represents the trade between the large and small states, and T_i, T_j represent the total trade of the large and small states.

P is the proximity of the large state to the target area:

$$P = 100 - 10 \text{ Lhav} \qquad (6)$$

where Lhav represents the location of the haversine of the great circle distance between the two states in a table of ten haversines of equally ascending value stored in the program, and

$$\text{hav} = \text{hav distance} = \text{hav}(\text{Lat}_i - \text{Lat}_j) + \cos\text{Lat}_i \cos\text{Lat}_j \text{hav}(\text{Long}_i - \text{Long}_j) \qquad (7)$$

and using $\sin^2 \frac{1}{2}x = \text{hav } x$ and $\sin x = \cos(90° - x)$ for substitution, (8) (9)
and $\sin x = 1.5706268x - .6432292x^3 + .0727102x^5$ as a fast sine routine, (10)
with $x = X°/90$. (11)

Cl is the coalition status of the two states, and is entered as 100 if the states are allied, as zero if not.

B is the bases entry; it is 100 if the large state has a base in the small state, zero if the large state has no base in the small state.

Value of the International Situation $V_i = 9W_i - 100$ (12)

V_i represents the sum of the differences between the war potential index of actor state i and the other eight actors in the universe.

Loss or Gain resulting from Action $\text{Loss} = W_i I_{i-j} A$ (13)

$\text{Gain} = W_i I_{i-j} A$ (14)

Initiator of action is credited with gain, others with loss.
A represents the intensity level of the action.

Cost of action to initiator: $\text{Cost} = CD_{i-j} A$ (15)

C represents a constant percentage of total power required to carry out an action of one intensity level at one-tenth the maximum possible distance. D_{i-j} isthe same figure as 10 Lhav in formula (7).

Modified War Potentials

For initiator of action: $M_i = W_i + W_i I_{i-j} A - CD_{i-j} A$ (16)

For counter-actors: $M_i = W_i - W_i I_{i-j} A + (W_i - W_i I_{i-j} A) A_c$ (17)

where A_c represents the intensity of the counter-action:

$$A_c = \frac{W_i I_{i-j} A}{W_i - W_i I_{i-j} A} 100 \text{ , if for redressing} \quad (18)$$

absolute loss, and

$$A_c = \frac{W_i - W_{2i}}{W_{2i}} 100 \text{ , if for redressing} \quad (19)$$

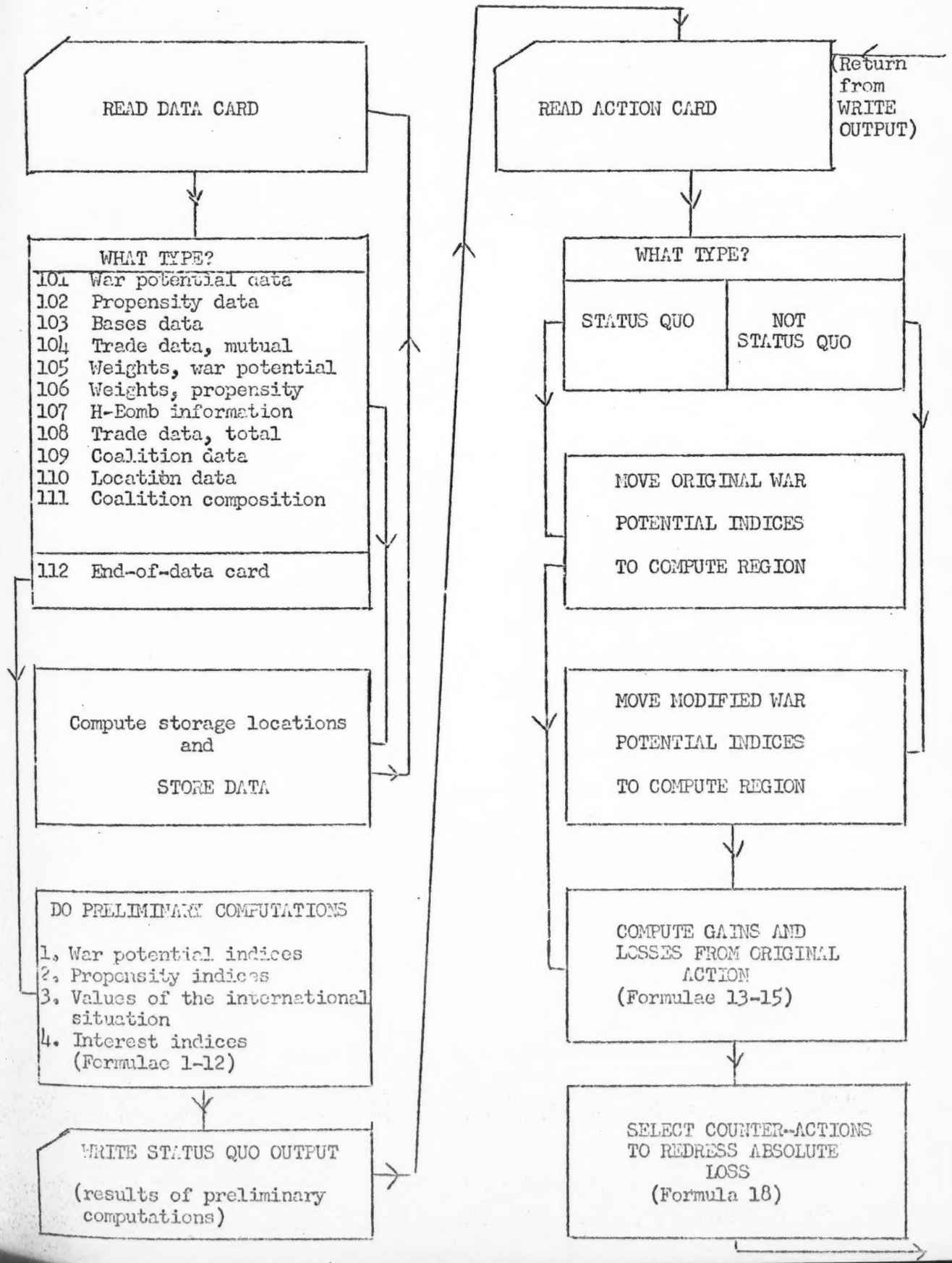
relative loss, where W_{2i} represents the state's share of total war potential as measured immediately after actor's initial gain and counter-actors' initial losses.

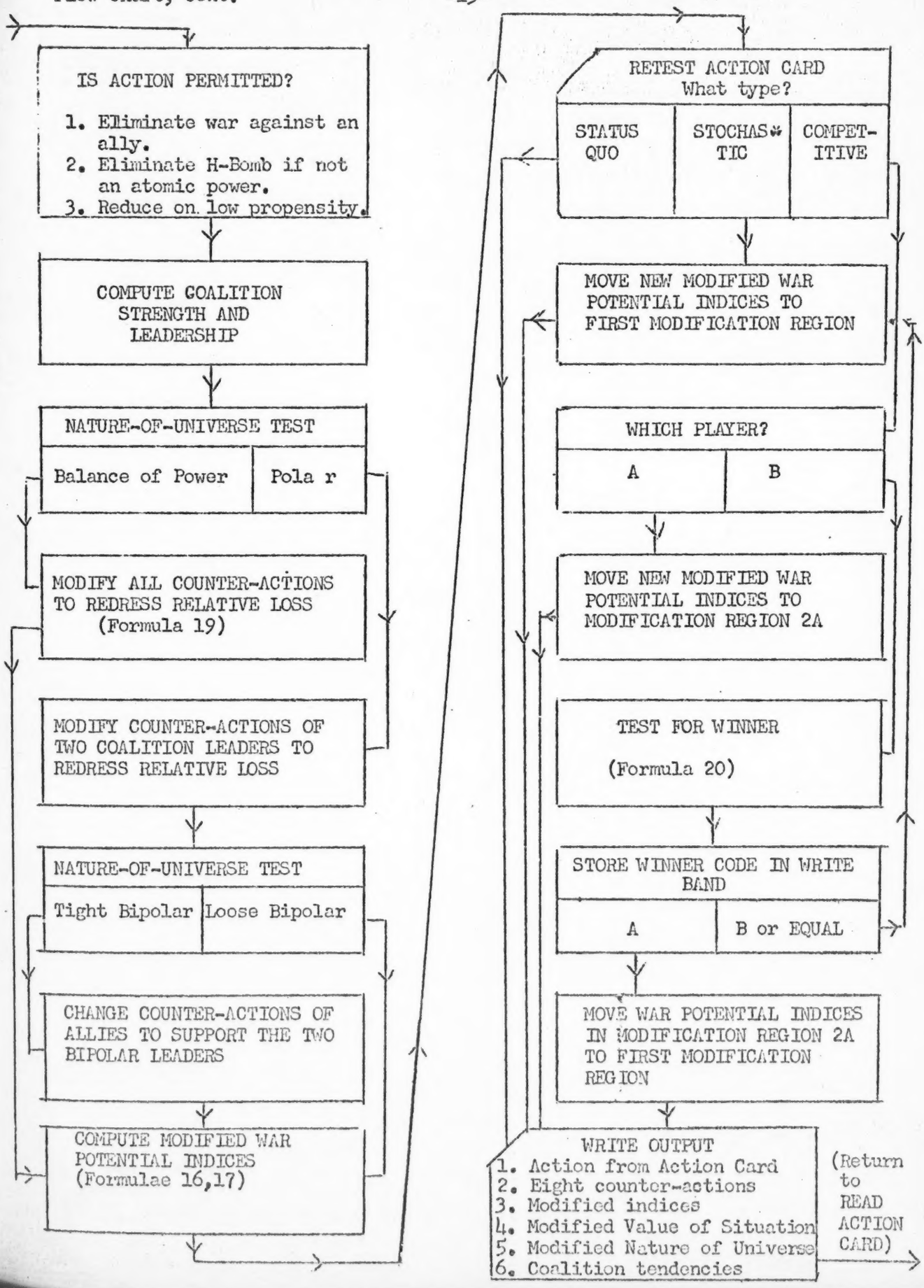
Winner of Competitive Game

$$(M_{2a1} - M_{1,1}) - (M_{2b2} - M_{1,2}) = y \quad (20)$$

is computed for y; if y is zero, the players gained or lost equally; if y is positive, player A gained more; if y is negative, player B gained more. $M_{1,1}$ and $M_{1,2}$ represent the war potentials of the two actor states chosen by the two players at the outset of their play. M_{2a1} and M_{2b2} represent the war potentials of the two actor states chosen by players A and B following the completion of the action and counter-action cycles on each play. The program treats the two actor states chosen as different, though the result is the same should the two players in fact choose the same actor.

3. General Flow Chart, A Simple Diplomatic Game




IS ACTION PERMITTED?
1. Eliminate war against an ally.
2. Eliminate H-Bomb if not an atomic power.
3. Reduce on low propensity.
COMPUTE COALITION STRENGTH AND LEADERSHIP
NATURE-OF-UNIVERSE TEST
Balance of Power
Pola r
MODIFY ALL COUNTER-ACTIONS TO REDRESS RELATIVE LOSS (Formula 19)
MODIFY COUNTER-ACTIONS OF TWO COALITION LEADERS TO REDRESS RELATIVE LOSS
NATURE-OF-UNIVERSE TEST
Tight Bipolar
Loose Bipolar
CHANGE COUNTER-ACTIONS OF ALLIES TO SUPPORT THE TWO BIPOLAR LEADERS
COMPUTE MODIFIED WAR POTENTIAL INDICES (Formulae 16,17)
RETEST ACTION CARD What type?
STATUS QUO
STOCHAS* TIC
COMPET-ITIVE
MOVE NEW MODIFIED WAR POTENTIAL INDICES TO FIRST MODIFICATION REGION
WHICH PLAYER?
A
B
MOVE NEW MODIFIED WAR POTENTIAL INDICES TO MODIFICATION REGION 2A
TEST FOR WINNER (Formula 20)
STORE WINNER CODE IN WRITE BAND
A
B or EQUAL
MOVE WAR POTENTIAL INDICES IN MODIFICATION REGION 2A TO FIRST MODIFICATION REGION
WRITE OUTPUT
1. Action from Action Card
2. Eight counter-actions
3. Modified indices
4. Modified Value of Situation
5. Modified Nature of Universe
6. Coalition tendencies
(Return to READ ACTION CARD)

NOTE:

Though delays have attended the completion of the package decks since the programmer first optimistically announced them a year ago, the final stages of laboratory work are now nearly completed, and the resulting program has benefited from a number of suggestions from colleagues. With some confidence, then, the programmer invites requests for the package deck, which will be available in two forms, one for IBM 650 installations equipped with index registers (line printer output optional), and one for the basic 650 without index registers. The alphanumeric feature is desirable, but the program could run without it. With the package deck will be included a set of input data cards, with instructions for loading and use, as well as modification of them. The only special board wiring required is for optional alphabetic output in the first four words of the printout. Requests should be addressed to: Oliver Benson, Department of Government, University of Oklahoma, Norman.

CONFLICTS OF INTEREST IN FEDERAL EMPLOYMENT

by

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I

After each major war which the United States has fought, attention has been focussed on problems of ethics and morality in government. World War II was no exception. In the face of demands for personnel that could not be satisfied adequately, almost all barriers to federal employment were removed or simply overlooked. Despite the anxious concern of a handful of men in the War Production Board and elsewhere, some dollar-a-year men played influential roles in policy matters affecting their own industries and occasionally their own companies. Statutes and regulations prohibiting federal employees from carrying on certain forms of outside economic interests were largely ignored.

During the latter years of the Truman Administrations, disclosures of influence by White House staff; improprieties in the RFC's handling of some loans, the FHA's stewardship of the housing program, and administration in the Internal Revenue Service; and manipulation of confidential information about agricultural commodity markets for the personal gain of certain federal employees sustained the post-war interest in ethics in government. Extravagant Republican slogans in the 1952 campaign promised to rid the country of the dispensers of deep freezes and mink coats. The 1951 Report on Ethics in Government of the Douglas subcommittee of the Senate Committee on Labor and Public Welfare was the first attempt to provide in a public document some broad perspective on problems of morality in government. The gradual unfolding during the Eisenhower Administrations of tales of vicuna robes, Air Force stationery, travel expenses, and illicit traffic in TV channels helped to direct some attention away from a general approach to the study of governmental ethics and toward a more specific inquiry into problems of conflicting interests.

The current concern with conflicts of interest in federal employment cannot be regarded as evidence of depravity and declining morality in the executive branch. Indeed standards of behavior in federal employment have probably never been higher. At least they are far removed from the depths of corruption reached at earlier periods in our history. This is not to argue that they are adequate or cannot be improved. While conclusive evidence is not available, it is likely that ethical standards in government today are higher than those in the business community.

The Purpose of Conflict of Interest Restraints

In a complicated set of statutes and regulations, certain forms of employee behavior that bring official duty into conflict with personal economic interests outside the government have been proscribed. The

general purpose of these restraints is the safeguarding of integrity in government. At least five components of governmental integrity may be distinguished.

1. Protection of governmental efficiency: a corrupt government is an inefficient government.

2. Protection of equal treatment by government of equal claims: a government which plays economic favorites among its individual citizens is philosophically unacceptable to the American people.

3. Preservation of the government's reputation for integrity: a government thought to be corrupt cannot sustain itself.

4. Prevention of the use of public office for personal gain: when officials use public office for personal gain, their action tends to undermine the three objectives above, but such action is also condemned on independent grounds, even where no direct injury to the operation of the government can be shown.

5. Preservation of policy-making functions within established channels: a responsible government cannot delegate to private entities the function of making policy decisions, nor can it tolerate the placing of private agents inside the government for the purpose of promoting private interests.

There is unanimity among members of Congress, congressional staff, leading officials in the executive branch, legal scholars, and political scientists that the existing pattern of restraints is unsatisfactory. The analysis of its inadequacies, however, varies considerably. Conflicts of interest have not been clearly defined, the recent record of Congress and the executive branch in dealing with the problem has not been analyzed, and the assumptions upon which sound restraints should be founded have not been delineated. This paper is a preliminary attempt to fill some of the gaps.

Definition of Conflicts of Interest

Conflicts of interest fall considerably short of embracing the range of problems collected under the umbrella of "ethics in government," as surveyed by the Douglas subcommittee. Rather they constitute one of the many types of ethical problems of federal employees: the problem of dual economic allegiance.

The concept of conflicting interests becomes clearer if bribery is excluded and treated as another form of unethical and, indeed, criminal, behavior. Arguably, an official who accepts a bribe puts himself in the most extreme conflict of interest position imaginable. But a workable line exists that divides the offense of bribery and conflict of interest situations. Bribery entails a payment to an official made to influence his official action; it is an act of commission, involving a *quid* for a *quo*.

By contrast, the conflict of interest situation is one remove away from the overt offense of bribery. An official who permits himself to be showered with gifts from a private party with whom he is dealing in his official capacity may not be influenced at all in his official actions. Yet his behavior is clearly objectionable. Nothing has happened yet, but we are alarmed at the potential of harm implicit in his conflicting interest and the general unsavory appearance of his position in the eye of the public. Thus the conflicts problem is a problem of potentiality and one which arises from the status of the office holder rather than from his official acts.

The statutes that are commonly identified as conflict of interest statutes have this element in common. All are directed toward the proscription of conduct which is not in itself offensive on the part of private citizens but which becomes offensive in the case of an official because of his status as a holder of a position of public trust. Inevitably, some flagrant breaches of the statutes shade off into outright bribery, and one of the statutes comes close to being a bribery statute. But in most cases the line between bribery and conflicts of interest is readily discernible.

Behavior which subjects or appears to subject an official to influence may or may not involve a conflict of interest. A regulatory commissioner who plays golf habitually with executives of companies regulated by his commission may be engaging in an innocent social diversion with men whose company he enjoys. He may become sympathetic to the policy positions taken by them on regulatory issues before the commission to the extent that his judgment is biased. But in itself no conflict of interest is involved. However, if he uses his official position to secure remunerative employment in a company headed by one of his golfing companions, there is a conflict of interest. Or if he accepts gifts from those who are affected by his official actions, the appearance of conflicting interests, at the very least, is present. Between the extremes of bribery and some forms of influence lie the great bulk of conflict situations in the federal employment today.

II

The Statutes

There are seven statutes dealing with behavioral problems within the range of conflicting public and private interests as defined above.[1] Three of these statutes are aimed directly at preventing employees or ex-employees from assisting others in the prosecution of claims against the United States (18 USC 283, 284, and 5 USC 99). A fourth is sighted primarily on the same target but is focused a little differently; it forbids the employee to assist another for pay in any matter which is before an agency of the executive branch and in which the United States is interested (18 USC 281). The fifth statute prohibits a government official from acting for the government in transactions with a business entity in which he has an economic interest (18 USC 434). The sixth forbids the official from receiving pay from non-governmental sources

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1. See Appendix.

"in connection with" his official services (18 USC 1914). And the seventh, the bribery hybrid, forbids the official from receiving pay for assisting another in obtaining a government contract.

Boiled down to their essence, five of the seven provisions forbid officials from assisting outsiders in matters in which the United States is economically interested; one calls for personal disqualification from matters in which the official has a conflicting economic interest, and one prohibits outside pay for government work. From these provisions a legal jungle has luxuriated.

All but two of the statutes were enacted during the 19-year period from 1853 to 1872, and most of them were responses to the venalities of the Civil War. All but one of them are criminal statutes, in the style of the nineteenth century, with differing penalties ranging from $1000 to $10,000 and from six months to two years imprisonment. It is mainly the executive branch which feels their sting, for members of Congress are expressly covered by only two of them, and the judiciary by none. Five of the statutes apply to employees when in government service. Two, both of them "claim" statutes, restrict the activities of former employees for a period of two years after leaving government service. No two of the provisions use the same drafting language in defining the scope of their application or the proscribed offence.

Federal conflict of interest controls are probably most associated in the public mind with compulsory divestment of stock, best exemplified by the widely publicized forced sale of Charles Wilson's General Motors stock. But none of the statutes requires stock divestment in any situation. Section 434 comes closest, in forbidding the employee to act for the government in transactions with business entities in which he is interested. But this section by its terms requires the employee to disqualify himself from the sensitive transaction, not to dispose of the outside interest. It is conceivable, perhaps, that an official might have to disqualify himself so often under Section 434 that he is unable to carry out his official duties. But even here, there is nothing in the statutes requiring him to dispose of his holdings. In Wilson's unhappy case, the requirement of divestment was imposed ad hoc as a condition to confirmation by the Senate Armed Services Committee. The Committee was under no illusion that divestment also forced Mr. Wilson to renounce the values, commitments, and ways of thinking which he had acquired in a lifetime of service in GM. . . But it was symbolic of the Committee's anxiety to avoid an appearance of conflicting interests in the appointment of high officials in the Defense Department, especially those associated in some way, however indirectly, with procurement.

The force of five statutes dealing with assistance to outsiders in the conduct of their economic relations with the government is felt mainly by the legal profession. The claims agents of the 19th century, against whom the statutes were in large measure directed, were by no means all lawyers. But today lawyers are substantially the only persons who, as a profession, hold themselves out to assist others in a representational capacity. The average businessman, university professor, or newspaper man who accepts or resigns government appointment

is not likely to find his normal economic activities affected at all by five of the seven statutes. To the lawyers, however, these five statutes are acutely relevant.

Section 434, the "self-dealing" statute, is really a rule of internal governmental administration, calling for the employee to disqualify himself in certain conflicts situations under threat of criminal penalty. In itself, it does not require an employee to disrupt his economic affairs when he enters government service or while he is there. Moreover, it has no post-employment consequences. Interestingly, it is applicable only to government transactions with business entities. Thus an officer of a non-profit research institution may, so far as this section is concerned, simultaneously serve as a government official or adviser and act upon government research grants to his own institution.

Section 1914, the "dual compensation" or "outside salary" statute, presents substantial difficulties for business executives serving government temporarily. If an official receives outside compensation, but not for services connected with his government duties, he is unaffected. The statistician in the Department of Agriculture can sell real estate during the evenings and weekends. What is forbidden is only "any salary in connection with his services" as a government official. These words are a source of great difficulty, particularly for a full-time executive who expects to return to his regular business job shortly and for part-time consultants, paid and unpaid. In the first place, what is "salary"? It has been construed rather broadly to include almost any kind of a transfer of value to the employee that smacks of compensation. The former employer, for instance, cannot make up the difference between his former salary and his government pay. But can the former employee let the employee use a company car or apartment, take him for a weekend cruise on the company yacht, help pay his moving expenses to Washington and back? Far more seriously, how far must the employee go in severing his ties with his former company? It is an easy matter to stop the monthly pay check, but what about pre-existing stock options, group medical and life insurance plans -- and most important of all-- retirement and pension plans? These queries barely scratch the surface mysteries of the word "salary".

Even more mysterious is the phrase "in connection with his services" as an official. An outsider clearly cannot pay an official "for" his government work. But may a former employer make any payment to the employee that does not raise the inference that it was made "in connection with" his government duties? Is the section violated if the employer pays a lump sum to the employee when he leaves "for past services?" Probably not. Similarly it is usually agreed that former employees may retain their rights in pension and insurance schemes if they are "vested" before the employee leaves his private employer. But in most cases it is impossible to determine from past judicial decisions whether a particular payment is "in connection with" official duties or not.

These definitional problems are multiplied many times for the part-time consultant. Take the case of the consultant who spends

a day each month in Washington on the government's call. What does Section 1914 require of him? Should his private employer dock him for a day's pay each month? Whose time was he on anyway? What of his stock option, retirement, and insurance plans? In practice, administrators in the government choose not to be silly, and Section 1914 is quietly swept under the rug and ignored by the part-time or intermittent employee and his agency.

The Administrative Regulations

As the previous section has indicated, the statutes deal only with certain specific forms of behavior, and the proscriptions, with some exceptions, apply across the board to all federal employees. And as criminal laws, they have been interpreted narrowly by the federal courts and enforced only fitfully. It is no wonder that the statutory restraints have been supplemented in detail by the regulations of individual agencies, tailored to some extent to the circumstances of employment in particular agencies. Those operating in rather sensitive economic areas may extend or tighten their administrative regulations governing employee conduct in accordance with their estimate of the vulnerability of their employees to temptations to violate norms of ethical behavior. Agencies that deal with a single industry or a single type of economic activity may attempt to circumscribe the activities of their employees very rigorously. But perhaps the major difference between statutes and regulations in this area lies in the aim of the regulations to present a more or less comprehensive catalog of prohibited conduct.

Almost all agencies have some regulations relating to conflicts of interest. In January 1959, among the executive departments, only the Post Office Department had not defined the obligations of its employees under the conflict of interest statutes. Of the independent agencies, four had no regulations (Federal Deposit Insurance Corporation, Indian Claims Commission, National Mediation Board, and Operations Coordinating Board), and the Selective Service System had virtually none. The National Labor Relations Board and the U.S. Tariff Commission regulate the conduct of former employees only. A recent study by the staff of the House Judiciary Committee found that the regulations differ widely from agency to agency, ranging from "a short list of prohibitions to hundreds of pages of intricate regulations..."[2]

A part of what the agencies term "regulations" are little more than hortatory policy declarations of the high aims of government service. Most of them deal in one way or another with a general pattern of prohibited activities covering five categories of behavior, although the degree of restraint varies a great deal. The categories are:

1. acceptance of gratuities
2. outside activities
3. financial interests
4. use and disclosure of information, and
5. dealings by former employees.

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2. U.S. House of Representatives, Committee on the Judiciary, "Federal Conflict of Interest Legislation," Staff Report to the Antitrust Sub-Committee, Parts III, IV, and V, 85th Congress, 2nd Session, December 30, 1958, p. 32.

In addition, some agencies may create an area of activity from which the employee is excluded completely. The development of such "quarantine" areas is particularly common when an agency's function is closely connected with a specific business. In the Federal Communications Commission, for example, the radio, television, and communications industries are quarantine areas from which FCC employees are excluded. Similarly employees of the Civil Aeronautics Board cannot have any connection with the civil aviation industry.

Some agencies deal in one or another with such a broad segment of the economy or society that no particular private area creates special dangers for employees of the agency. In these agencies the task of regulation appears to be more difficult. Similar difficulties exist in agencies whose functions, although confined to a certain industrial or economic area, embrace a very broad range of private activities. For example, the Housing and Home Finance Agency can scarcely mark the field of real estate and home ownership as quarantine areas for their employees.

Techniques of administrative regulation are rather primitive in most agencies, and highly developed along certain lines in just a few. The techniques can be quickly identified.

1. Orientation and indoctrination. In 1952 Herbert Emmerich reported that he knew "of no governmental in-service training programs that discuss the environment in which government operates or the points of ethics involved in standards of good government practice....New government officials are presumed to know the rules, and there is a surprising lack of indoctrination on proper conduct. There are surprisingly few departmental conferences to develop or to teach desirable standards of conduct."[3] Since August 1957 the White House has developed an orientation program for newly appointed political executives. Several agencies have prepared attractive, cartoon-illustrated pamphlets outlining standards of behavior to which the federal employee will be held.

2. Certification procedures. Some agencies require employees to certify in writing that they have read and understood the regulations governing employee conduct. The Department of Commerce, in an unusual requirement, requests each new employee to read its regulations on conflicts of interest and to certify either that he has no private business activity which could reasonably be considered improper or that he has some private interest that may involve a question of propriety. In the latter case, he must describe his outside interest and request a departmental ruling. The Atomic Energy Commission, which is one of the agencies most sensitive to conflicts problems, includes in its personal service contracts with consultants a statement that the consultant is familiar with and agrees to conform to the AEC regulations on the subject. Most agencies, however, specify no procedure at all.

3. Disqualification procedures. Few agencies have established any procedures of disqualification under Section 434. Most of them depend simply on the initiative of the employee to inform his superiors when he thinks he should disqualify himself.

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3. Herbert Emmerich, "A Scandal in Utopia," Public Administration Review, vol. XII, Winter 1952, p. 7.

4. Outside employment. Again very few agencies have established formal procedures to enforce the rules restricting employment outside the government.

5. Conflicting outside interests. The Housing and Home Finance Agency requires each employee to complete and maintain on a current basis a form listing business and personal interests and activities that may be in conflict with the official duties of the agency. New employees in the Federal Power Commission file a list of securities they own and report new acquisition within thirty days. The Securities and Exchange Commission regulates in detail transactions in securities by its employees. Most agencies, however, take a passive attitude toward enforcement of their regulations.

6. Procedures applicable to former employees. The SEC and the Department of the Treasury have elaborate rules restricting the practice of former employees before them. Section 284 forbids a former employee for two years after leaving government service from representing a client in prosecuting a claim against the United States if he was connected with the matter when he was a government employee. Several agencies, including the Department of the Treasury, have imposed a permanent bar preventing a former employee from appearing on behalf of a client to prosecute a claim against the United States if he gave personal consideration to the matter as a government employee or if he gained personal knowledge of it while in government service. Most agencies, however, are quite silent on the enforcement of regulations in this area.

Administrative sanctions for violating agency regulations range from a warning letter or reprimand to outright dismissal and referral of the case to the Department of Justice for criminal prosecution. Only a handful of agencies specified in advance the penalties to be invoked for stated offenses.

III

The Eisenhower Administration and the Conflicts Problem

In the light of the promise of the Eisenhower Administration to throw out the Democratic rascals and raise the level of integrity in the government, it is surprising that the Administration has dragged its heels in refusing to face up to the conflicts problem and has allowed the initiative to pass to Congress. The Administration's first move to insure proper conduct by federal employees was the issuance in June 1954 by the Director of the Budget of instructions to agency heads to review their inspection programs for the detection and prevention of employee misconduct. The memorandum stimulated some action in a few agencies but it was not followed by any systematic review of progress. In July 1954, Attorney General Brownell unsuccessfully urged Congress to amend Section 284 in order to overcome the decision of the federal court in the Bergson case[4] which limited the prohibition in Section 284 to proceedings that involve a claim for money or property against the United States.

Beginning in 1953 the Administration considered several bills to exempt certain employees from the conflict statutes. Both the Bureau of the Budget and the Department of Justice opposed such proposals. In its 1955 report

4. 119 F. Supp. 459(1954).

the second Hoover Commission stated, that "conflict of interest laws requiring divestment of personal investments and industrial pensions and other rights" impeded the recruitment of competent executives. While the recruitment difficulties of the Defense establishment were well known, the Commission's Task Force on Personnel and Civil Service had adduced no evidence in support of the Commission's conclusion. Moreover, as an interpretation of the legal consequences of Sections 1914 and 434, the Commission's statement was simply inaccurate.[5] In the summer of 1955, the Budget Bureau urged a government-wide study of conflicts of interest as proposed by the Hoover Commission, and it requested the Attorney General to prepare a consolidation and revision of the statutes. The President's Committee on Governmental Organization, headed by Nelson Rockefeller, gave some attention to the problem but took no action. In April 1956, the Attorney General reported to the Cabinet that the Justice Department was reviewing the conflict of interest laws but had nothing to report as yet. The Administration appeared to be increasingly on the defensive as instances of improper behavior by high Administration officials were exposed by congressional committees. Even though presidential nominees were subjected to searching scrutiny by a few committees in the Senate, the Attorney General maintained the position that the Department could not advise the President's nominees on the adjustments they should make to comply with the conflict statutes. The Attorney General argued that it could not advise nominees whom it might later have to prosecute.

The Justice Department devoted most of its efforts from 1956 to 1959 to efforts to counter the drive of the House Judiciary and Government Operations Committees to force the adoption of mandatory standards for the operation of advisory committees and to prohibit the employment of persons without compensation. In a Cabinet Paper of May 18, 1958, the Attorney General proposed to apply mandatory standards, by presidential order, to virtually all public advisory committees unless exempted by the President on the request of the agency head. In response to objections raised by other agencies, Justice submitted a modified draft and the Cabinet secretariat was directed to compile accurate data on the number of and use of such committees in the government.

Despite a show of concern on the part of the executive branch, the House Committee on Government Operations persisted in pressing for mandatory standards for advisory committees which make a full-time salaried official of the government responsible in the case of each committee for preparing the agenda, keeping minutes, chairing meetings, and limiting the committees to purely advisory functions. The House passed the measure, but the Senate Government Operations Committee agreed to pigeonhole it on the promise of the Administration to take effective administrative action. Despite the promptings of the Department of Justice, there was little enthusiasm within the executive branch for such standards. But because some executive action was required in the circumstances, a fairly innocuous but sensible document was issued on February 2, 1959, which is devoid of any mark of authorship or authority and bears no letterhead or signature, although it was apparently issued through the offices of the Budget Bureau. It prescribes standards for advisory committees similar to those embodied in the House bill, but permits many

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5. U. S., Commission on Organization of the Executive Branch of the Government, "Personnel and Civil Service," Report to the Congress, Feb. 1955, p. 36.

exceptions for other than industry advisory committees. While the issue of advisory committees was certainly a minor if not an insignificant one, and the executive branch, apart from Justice, played merely a holding action, the executive branch gave it probably more attention than it did to any other aspect of the conflict of interest problem.

Finally the Administration made an important change in policy. Attorney General Rogers rejected Brownell's position in refusing to advise presidential nominees on conflict of interest matters. Upon request of the White House or legal counsel of other agencies, the Department now undertakes to confer with nominees subject to senatorial confirmation to suggest suitable adjustments of private interests required or deemed desirable under the law or in light of the climate of opinion prevailing in the confirming committee. Under this procedure a nominee need not stand alone in testimony about possible conflicts between his private interests and the official duties of the position to which he has been nominated. The revised policy recognizes that the government has an interest in securing prompt confirmation of presidential nominees in the Senate under conditions that minimize embarrassment both to the Administration and the nominee.

Congress and the Conflict of Interest Issue, 1953-1959

Since 1953 only the Senate Committee on Armed Services has demonstrated a sustained interest in exploring possible conflicts of interest in confirmation proceedings. Spurred by Charles Wilson's mishandling of his own confirmation hearings as Secretary of Defense in January 1953, the Committee has been intensely concerned with the elimination of direct and indirect pecuniary interests of nominees to high positions in the defense establishment in any firm that does or might do business with the military departments. The Committee has focussed sharply on the procurement function and the contractual relationship. Doubts about the desirability of divestment of stock ownership as a condition of confirmation have been resolved by the Committee in favor of requiring divestment. While the Committee is concerned with actual conflicts of interest, it is also troubled by the appearance of conflict. The phrase "Caesar's wife" recurs constantly in the hearings. In effect the committee decides in each case what adjustment the nominee must make in his private finances and business interests in order to obtain its blessing. In this sense the Committee functions as an adjustment board, using ad hoc criteria that extend well beyond the statutory prohibitions against conflicts of interest. Some of the Committee's sensitivity to the conflicts issue may be traced to the Committee's anxiety to minimize or eliminate the possibility that it may recommend confirmation of a nominee who may subsequently engage in improper or indiscreet actions. In this respect its actions have been essentially nonpartisan.

In a few cases the Senate Finance Committee, the Senate Banking and Currency Committee, and the Senate section of the Joint Committee on Atomic Energy have queried nominees about their outside interests that might conflict with their official duties, notably in the cases of George Humphrey and John McCone. Like the Armed Services Committee, these committees appear to regard the procurement function as peculiarly vulnerable to executive wrongdoing, and anything that involves private oil interests is immediately suspect. Memories of Teapot Dome are still very much with us.

The Senate Commerce Committee, which handles confirmation hearings for five regulatory commissions has demonstrated only a perfunctory concern with conflict questions. Ordinarily the Committee is more interested in the nominee's party affiliation, in the light of statutory requirements of bipartisanship on the commissions, than it is in his outside interests. Members often go through the motions of obtaining a statement from the nominee that he is above prejudice or bias. The hearings are relaxed, pleasant, and even jovial. Members of the Committee are very influential in securing the nomination of men to these commissions, and the Committee has little inclination to probe into the qualifications and character of nominees sponsored or endorsed by other senators. Even nominations following closely on the heels of scandalous behavior by a former commissioner may be handled very gently.

The Senate shares with the House the function of investigating alleged improprieties in official behavior. Such inquiries frequently lead to resignations of officials, and in this sense, they are deconfirmation proceedings. Although partisanship has been a dominant motivation in these investigations, they have disclosed important gaps in the conflict of interest statutes. For example, Harold Talbott, Secretary of the Air Force, used or appeared to use the influence of his office to secure contracts for a firm in which he held a partnership with other firms doing business with the Air Force. Hugh W. Cross, chairman of the Interstate Commerce Commission, appeared to use his public position to influence three railroad presidents to enter into a contract to transfer passengers from one station to another in Chicago with a firm in which he had prospects for remunerative employment in the near future. In both cases, as exposed by the Senate's Permanent Subcommittee on Investigations, conflicting interests were present which were not covered by the existing statutes.

The Antitrust Subcommittee of the House Judiciary Committee has been the primary legislative investigator in the conflicts area. In 1956 it considered at length the case of Peter Strobel, Commissioner of the Public Buildings Service, who seemed unable to differentiate clearly between his role as a public official and his private business interests in an engineering firm. And in 1958 it was disturbed by the unfortunate coincidence that Robert Tieken, United States Attorney in Illinois, had subpoenaed members of highway and toll road commissions in the State of Illinois to appear before a grand jury at a time when he was also negotiating with these gentlemen for the sale of his property.

The House Committee on Government Operations also studies the case of Robert Tripp Ross, Assistant Secretary of the Army, whose wife and other close relatives had extensive procurement contracts with the Army for the purchase of military clothing. Perhaps the most dramatic inquiry has been the study of regulatory administration by the Special Subcommittee on Legislative Oversight on the House Commerce Committee, which explored in detail the questionable practices of commissioners of regulatory agencies in accepting travel expenses and other favors from their regulated clientele. The Subcommittee also explored in detail the case of Richard Mack, FCC Commissioner who was currently in debt to an attorney representing the successful applicant for Channel 10 in Miami, and the case of Sherman Adams, Assistant to the President, who had received many gifts and favors from an industrialist on whose behalf he

had communicated with three regulatory agencies before whom cases involving the industrialist were pending. While Mack's alleged behavior is covered by other provisions of criminal law, Adams' apparent effort to influence official action is not.

On balance, perhaps the principal contribution of these inquiries has been their demonstration that many forms of behavior involving conflicting interests are more subtle than the types of behavior proscribed by the statutes and are probably not covered by them.

Congressional committees have also been active recently in exploring issues of policy related to conflicts of interest.

1. The House and Senate Committees on Post Office and Civil Service developed in 1957-58 a code of ethics for federal employees and members of Congress which Congress adopted in July 1958 as House Concurrent Resolution 175. The code is a statement of principles in the style of the Ten Commandments for all public servants to follow. It contains no enforcement provisions. More elaborate codes have been proposed in several bills, some of which would add new titles to the Administrative Procedure Act or the Legislative Reorganization Act of 1946. The most comprehensive proposal is that of Congressman Celler of New York, chairman of the House Judiciary Committee.

2. In the House the Judiciary Committee and the Government Operations Committee have publicized the use of WOC's and advisory personnel and have charged that their employment in effect places private agents in government offices and promotes monopoly in business.

3. In 1957 the Preparedness Investigating Subcommittee of the Senate Armed Services Committee and in 1959 the House Armed Services Committee dealt with problems of conflicting interests in the employment in corporation doing business with the military departments of retired military officers.

4. In 1958, the Senate Government Operations Committee held hearings on a bill to regulate the outside employment of federal employees.

5. The Senate and House Committees on the Judiciary and the House Commerce Committee have considered various proposals to prohibit or limit ex parte communication between private parties and federal officials involving regulatory matters pending before a government agency.

6. In 1958, the House Judiciary Committee initiated a comprehensive review of statutes, regulations, and proposals relating to conflicts of interest. Two reports by the staff of the Antitrust Subcommittee constitute the most successful congressional attempt to date to analyze the statutes comprehensively rather than piecemeal as a basis for proposing amendments.

Generally Congress has been more effective in exposing alleged improprieties in official conduct than it has been in resolving some of the pressing issues of policy on conflicting interests.

IV

Evaluation of Existing Statutes

The conflict of interest statutes were drafted piecemeal in response to particular problems and conditions that no longer create substantial risks to the public interest. At best they cover only more overt and less subtle forms of behavior. Some of the dramatic cases in recent years involving indiscreet or improper official conduct have revealed glaring gaps in our statutory armor. Apart from their inadequacies in the light of modern conditions, the statutes have never benefitted from a comprehensive consideration of the setting in which conflicts emerge. Their fitful, opportunistic development effectively precluded such analysis. It is no wonder, then, that the assumptions upon which they were founded are grossly inappropriate today. Efforts to revise them are likely to be unsatisfactory unless the assumptions upon which they are based relate meaningfully to contemporary conditions.

The Environmental Setting of the Conflicts Problem

Only a brief statement is possible here on the environment out of which conflicts of interest emerge today.

1. The Role of Government. Concept of interest regulation in the United States was founded on the assumption of a neat separation between government and private life. But the government-non-government dichotomy has simply ceased to exist. Purely governmental activity may be detected in certain isolated areas, but by far the greater area is one of shades of gray between what is purely governmental and what is purely private. And here is where the problems of conflicting interests grows really severe today.

Both quantitatively and qualitatively, the impact of government on economic life has become infinitely more complex and strategic than it was decades ago. Indeed a striking characteristic of the contemporary setting is the ubiquity of government in economic affairs. One consequence is that the tipping of official judgment on almost any decision can be, and usually is, of critical importance to many individuals and economic areas. Conversely, in a way seldom noticed, many government employees are so closely connected in their official duties with the work of private firms that they are in part industry personnel. Given the pace of industrial growth and increases in family income, more and more persons, including government employees, find themselves with private investment interests. It becomes increasingly difficult to find appropriately monastic government employees whose entire economic past and future revolves around their government salaries. In summary two things have happened simultaneously to the government employee. Through his involvement in governmental programs that pervade almost every nook and cranny of the economy, he participates in making decisions that matter a great deal to persons outside the government. And he has begun to participate personally in his private capacity in outside affairs more fully than he used to. Not only has the economy become intricately mixed, but the employee himself enjoys the pleasures and risks of the market place as well as the security of the civil service cloisters.

2. Built-in Conflicts of Interest in the Government. A great many governmental programs have been established to promote, protect, and otherwise serve particular interests. In more specific ways, certain bureaus and offices have become through the years identified with certain interests. The task of the agency in effect becomes one of representing certain private interests within the government. Partly because they were designed that way and partly because of the effectiveness of interest groups, many federal agencies today have built-in sources of onflicting interests and built-in devices for making private influence felt in formulating public policy. The fragmentation of political power and responsibility in the American constitutional system seems to be almost tailor-made for groups hoping to convert federal agencies into their representatives inside the government.

3. Centrifugal Forces in American Politics. In constructing the constitutional system, the Founding Fathers formulated an imaginative set of devices to limit political power and frustrate political action. The design of American government seems, indeed, to produce conflict, friction, and tension. As Herman Somers puts it, in the American constitutional system, "virtually all power is shared between rival units of government driven by different interests."[6] The development of administrative programs and agencies by bits and pieces has contributed also to the diffusion of responsibility. Federal executives today operate under conditions that force them to share their powers of decision with others.

The implications for conflicts of interest are somewhat impressionistic but important. When political and administrative authority are so highly diffused and circumscribed, an atmosphere of tension and frustration may encourage behavior that spills over in conflict of interest. The need to mind somebody else's official business in order to mind one's own opens up opportunities for the exercise of undue influence. The weaknesses of departmental managment and the well-developed abilities of bureau chiefs to carve out for themselves areas of operating autonomy may bring government employees into contact with private parties closer than an arm's-length relationship permits.

4. The Representative Function in Congress. Leading government officials have recently observed that legislative intervention in the life of the federal executive has probably become "more complex, more subtle, and more detailed."[7] In American society, the member of Congress is expected by his constituents to intercede on their behalf with agencies to get a son transferred from one Army post to another, to put in a good word with Navy procurement officials, to get a regulatory commission to make a favorable decision, to push through a grant for a survey of local housing needs, and so forth. Whatever the reasons may be, the congressman and senator are increasingly burdened with the role of broker for the community in its individual and collective dealings with the federal government.

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6. Herman Miles Somers, "The President, the Congress, and the Federal Government Service," The American Assembly, The Federal Government Service: Its Character, Prestige, and Problems (1954), p. 53.

7. Marver H. Bernstein, The Job of the Federal Executive (Washington: The Brookings Institution, 1958), p. 101.

Congressional intervention in administration appears to be greater in programs involving loans, subsidies, contracts, franchises, and permits of various kinds. In these programs the scope of administrative discretion is often broad and the criteria of action in the public interest may be only vaguely outlined in statutes. Many members of Congress would be relieved of an awkward and time-consuming burden if they were forbidden to intervene in matters of formal adjudication in an agency. But almost all of them regard such intervention as an honorable and necessary part of their representative function. Here the normal objection to backdoor approaches to regulatory agencies on behalf of a party to a pending proceeding is overridden by the traditional concept of the legislator's responsibility to serve his constituents.

Congress is prone to follow a double standard in fixing rules of ethical conduct for its members and for government employees. What may be wrong or indiscreet for a presidential assistant in communicating with a regulatory commission is not necessarily regarded as such for a member of Congress.

5. The Federal Personnel System. The combination of a civil service merit system and a revolving layer of political appointees loyal to the administration in power has become an indigenous and unique characteristic of the federal personnel system. In the main the great body of civil servants is recruited at junior levels and promoted through the ranks in accordance with merit and opportunity. Executives who are appointed outside of the civil service and exercise important policy-making duties number about 1100. They serve for relatively short periods of time and do not expect to make government service a career. As the Task Force Personnel and Civil Service of the second Hoover Commission noted in 1955, the recruitment of executive talent has become more and more difficult. While some of its observations may have been influenced by the special circumstances of recruitment facing the new Eisenhower administration, the Task Force's awareness of the growing shortage of able executives with qualities of political leadership and the failure to develop systematically anywhere in American life the capacities that political executives need to have still provides important guidelines.

Inadequate compensation and low prestige are among the most important deterrents to recruitment of executive talent by the government today. In the case of the great body of civil servants, the conflict of interest statutes do not appear to deter recruitment or to bite deeply into their lives. But for the political executives who drift into and out of government and for experts and consultants who serve the government part-time or intermittently, the statutes, regulations, and senatorial preferences may be obstacles.

The nature of the federal personnel system precludes any simple answer to the conflicts problem, based on a monastic conception of the position of the government employee. If modern America were Plato's Republic, in which philosopher-kings were forbidden to have any private property or any outside economic interest, the conflict of interest might be put to rest. But as long as we employ a dual system of civil servants flanked at the top by transient political executives -- and there is no evidence that the system will be altered or abandoned -- problems of conflicting public and private interests of government

employees remain with us. It is not one which can be neatly solved and put away on a shelf, nor is it one which can be avoided. Rather it is one that American society must learn to live with on terms that are ethically acceptable.

6. The Movement Toward a Security Society. Almost all observers of the American scene today point to the spread of concern about security in the world of the "organization man." What is not so widely noticed is the decreasing mobility and transferability of personnel--particularly at executive levels--in the business community. Group insurance, pensions, stock options, and other fringe benefits have become commonplace, and with them have come heavy pressures upon the beneficiaries of such plans to remain where they are--in their corporations. Moreover, the promotion ladder in corporate enterprise today is heavily weighted in favor of those who remain with the organization. Salary has become less important as fringe benefits, expense accounts, and company prerequisites have multiplied. The man who is on the threshhold of an important career in his organization may be reluctant to leave for a temporary period for government service because he does not want to endanger his pension rights and his place on the promotional ladder. As Fortune stated in 1954, "...for the business executive in the prime of his career, an extended non-emergency tour in Washington is a contradiction of his apparent personal aims. His dispensability to his corporation and his corporation's indispensability to him are bound to remain the crux of his problem."[8]

The implications for the conflict situation are serious. To the extent that Section 1914 deals with "salary" in ruling out compensation from a non-governmental source, it is naively literal. To the extent that it requires wholesale severance of all economic ties to all former employers, the statute is properly chargeable with a deterrent effect upon recruitment. The cost of renouncing fringe contract rights is often a cost that cannot be undertaken lightly.

7. The New Technology. The pace of technological change, especially since 1950, has brought a sudden awareness of the high degree of national dependence on a relative handful of scientists. Almost overnight scores of new consultative committees have sprung into being in governmental scientific programs, and the competition for the best scientific talent has become fierce. Almost immediately the scientist has, without his knowledge and understanding, become dramatically embroiled in conflicting interests. If the scientist had remained the purist he was formerly supposed to be, working as a man apart in the sanctity of his ivory tower laboratory, the problem would scarcely be noticeable. But the scientist today leads a remarkably complex life in which public and private strands are interwoven tightly. The scientist in the university, for example, works on projects financed by government grants. He may also consult regularly or occasionally with one or more government agencies and serve on advisory committees that help to allocate grants for research and development work. He carries on a private consulting practice, some of which brings him into contact with firms that do business with the government. And in many scientific fields, the scientist has joined forces with some colleagues to establish a small company that

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8. John McDonald, "The Businessman in Government," Fortune, vol. 50, July 1954, p. 158.

carries on research financed by the government or manufactures some small devices which are sold to the government or to government contractors. Statutes that assume a clear separation between the public duties and private lives of government employees are strikingly inept as applied to the modern scientist.

The kind of analysis of the environmental setting of conflicts problems today suggested above may help to sketch in the metes and bounds of the problem in public policy that we face. Clearly we have little cause for anxiety with respect to the conduct of civil servants. For the political executives, consultants, and experts who serve government temporarily or intermittently, we are concerned not only for the protection of governmental integrity but also for the removal of unnecessary obstacles to the recruitment of personnel needed by government. The formulation of appropriate statutory and administrative safeguards that do not penalize government in the competition for talent is the next step.

PRINCIPAL CONFLICT OF INTEREST STATUTES

SECTION NUMBER	DATE	SHORT TITLE	WHAT IS FORBIDDEN	WHO IS COVERED	PENALTY
18 USC 216	1862	"Procurement of Contracts"	1) taking "money or thing of value" for procurement of any contract from the U.S. 2) giving "money or thing of value" for procurement of such contract	Congressmen Judiciary (no authority) All Executive Branch employees	Not more than $10,000 or not more than 2 yrs. or both, and disqualification Optional voiding of contract by President
18 USC 281	1863	"Compensated Services"	Receipt, or agreement to receive compensation for rendering, by self or another, any services "before" the Executive Branch "in relation to" any matter in which the US is interested	Congressmen Judiciary (probably) All Executive Branch employees not otherwise exempted Exempted by Section 281 Retired officers D.C. National Guard Exempted by other Statutes Defense Maritime Board WOCs (DPA, Sec. Def.) WAEs (" " ") Atomic Energy Boards, Genl. Services Admin. WOCs (Mutual Security)	Not more than $10,000 or not more than two yrs. imprisonment, or both; and disqualification from U.S. office
18 USC 283	1953	"Prosecution of Claims"	Prosecution, or aiding or assisting in prosecution, or receiving share or interest in consideration of aid or assistance in "prosecution of support" of "claims" against the United States	Congressional employees Judiciary (probably) All Executive Branch employees not otherwise exempted Exempted by Section 283: Retired officers (limited) D. C. National Guard Exempted by other statut s: Defense, Maritime Board, WOCs (DPA, Sec. Def.)	Not more than $10,000 or not more than one year imprisonment, or both

				WAEs (DPA, Sec. Def.) Atomic Energy Boards, Genl. Services Admin. WOCs (Mutual Security	
18 USC 434	1863	"Self-Dealing"	Agent or officer of the United States transacting business on behalf of government with any business entity of which he is an officer or agent, or in which he has a pecuniary interest	Congressional employees (no authority) Judicial (no authority) All Executive Branch employees not otherwise exempted Exemptions in other statutes: WOCs, WAEs, (limited)	Not more than $2,000 or not more than two years imprisonment, or both
18 USC 1914	1917	"Outside Salary"	1) receipt from outside source of salary "in connection with" government work 2) payment by private source of supplement to salary of government official or employee "for" government services	Judiciary (probably) and its employees All Executive Branch employees not otherwise exempted Major exemptions in other statutes: WOCs (DPA), WAEs (Natl. Housing, Draftees, *Library of Congress, *Agriculture Dept., *Forestry Service, *Immigration, *Railroad Retirement Board *Railroad Unemployment Insurance Personnel (*means certain persons only)	Not more than $1,000 or not more than six months imprisonment, or both

Statutes Applicable Post-Employment

5 USC 99	1872 The "Civil" Statute	Within two years after leaving government, to act as counsel, attorney, or agent for prosecuting, or in any way to aid in prosecuting, any claim against the United States that was pending in "either of the...departments" during the period of employment	Only former "officer, clerk or employee" of an executive "department" Unclear as to coverage of part-time, intermittent, WOCs, WAEs Military: probably not covered Exemrted by other statutes: Defense, Maritime Board, WOCs (DPA, Sec. Def.), WAEs (" " " , Atomic Energy Boards, Genl. Services Admin., WOCs, WAEs (Mutual Security), Selective Service	"shall not be lawful" No criminal penalty; has been used as a defense to an action for a fee
18 USC 284	The "Bergson" Statute	Within two years after leaving government service, to prosecute or act as counsel, attorney or agent for prosecuting any claims against the United States involving any subject matter directly connected with which the former employee was employed or performed duty.	All Executive Branch employees not otherwise exempted Exemptions in other statutes: *WOCs (DPA) *WOCs, WAEs (Mutual Security) *Atomic Energy Commission *WOCs, WAEs (Nat. Sec.) HHFA (*denotes special rules)	Not more than $10,000 or not more than one year imprisonment, or both

THE INTERNATIONAL POLITICS OF FOREIGN AID

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International politics is the struggle of governments to iron out what they regard as conflicts of interest. In relation to foreign aid it is the use of American resources to achieve international objectives. Foreign aid can take and has taken many forms. There have been large sums spent for direct military expenditures. There have been funds to enable economies to support higher levels of defense expenditures. There have been programs for the repairing of whole economies, such as took place under the Marshall Plan in Europe. There have been programs for the disposal of agricultural surpluses. There have been grants for the assistance in building new economies able to produce higher standards of living. There have been grants to enable higher levels of technical skill. There have been loans and grants with the purpose of developing a freer trading world. Almost all of these forms are now being used. Often they are used in conjunction with each other. They are always used in a complex and interrelated pattern of cultural, social, psychological, technological, administrative, and political circumstances.

It is the intent of this brief paper to illustrate some of the major conflicts which exist today and the pattern into which international politics has fallen in relation to aid of various kinds.

The backdrop against which all international politics is played today is the struggle between the two great powers which emerged from World War II with their economies least harmed. To be sure the Soviet Union suffered grieviously in World War II. But much of the basic industrial structure had been built outside the combat zone and suffered little harm. This was the capital base from which the rebuilding and present capital structure of the Soviet Union stems. Since the war, both of the economies have expanded enormously. But the distinctive force which sets these two nations apart is their possession of nuclear weapons and the ability to deliver them. In the case of both nations the military capacity of a non-nuclear character has also expanded. The political power which goes with this economic and military strength has also grown.

The economic strength of Western Europe has also expanded tremendously in spite of the need for starting from a completely shattered social structure. But its military posture has not kept pace with its economic development in spite of NATO. Fundamentally this is due to the fact that

Western European military strength is an inherent part of the North Atlantic complex which includes the British-American nuclear potential. But the political impact of Western Europe is minimized by the divisions between Western European countries.

This backdrop has its economic, military and social facets. One cannot segregate the economic and military from the political aspects. I regard them as an integral part of the political structure. Just as one cannot talk about domestic politics without including all these phases of our life, he must include them when talking about international politics.

In order to emphasize this point it should be noted that whenever a department of the United States government becomes involved in international affairs, it feels the necessity for establishing its own "foreign service". Each of these takes on reporting and other functions similar, as well as supplementary, to those of the Department of State. Foreign governments have their troubles in knowing when they are talking to the United States if they have to decide whether the Department of Defense functioning through the various Missions is the accredited representative of the United States when it controls the money; or whether the ICA representative who controls some other money is the representative; or whether the Department of Agriculture, which controls the equivalent of money, or the Treasury, whose nominee is a managing director of the international lending institutions, or the Department of State, whose representative is Ambassador Extraordinary and Plenipotentiary really speaks for the United States. Of course foreign governments are not the only people who are confused by this situation. It is rumored that even the Department of State and the President sometimes are.

The point to be emphasized is that no matter where one starts on the broad spectrum of foreign affairs, he finds himself enmeshed in other phases of foreign affairs and he is in the middle of international politics. It is worthy of note that as the "ministries of foreign affairs" of our various government departments have become better acquainted with this fact, they have become more and more understanding of each other. The military departments have learned that the attempt to separate military aid from its economic, social and political repercussions will not produce desired results. Nor will economic aid, considered apart from both domestic and international politics, function to the well-being and interests of the United States.

This tells us that the first job with regard to the international politics of foreign aid is to have our people as well as our officials better acquainted with the impact of the foreign aid and to know its relations to the other parts of the international matrix. As we learn to put these together at home in our own government, we may have more success abroad.

The second thing to be noted is that foreign aid covers a variety of activities which at first blush do not seem to be aid. What does commercial policy have to do with "foreign aid"? The development of the reciprocal trade policy over the past quarter century has gone forward with little emphasis on its having anything to do with "aid". Yet, if one examines the economic phenomena involved, he notes that the processes of trading are the same as those involved in the transfer of "aid" to a country. In fact, the transfer of assets from one country to another takes place most simply when the one government makes either a gift or a loan of cash to another. When this happens, international trade moves the resources most simply and with little friction. Hence commercial policy is important in determining the efficient administration of aid. This is the reason that the original Marshall Plan legislation provided that private trade channels should be used wherever practical in carrying out the program.

There is a normal distinction between loans and grants. But the terms of the loan can sometimes be so generous that "loan" and "gift" are interchangeable words. We are all aware that the "war loans" of World War I became "gifts". We are also aware that "lend-lease" or "mutual aid" was intended to turn loans into gifts. However, the settlement of lend-lease accounts between the United States and the Soviet Union after World War II became a major evidence of the basic differences between the United States and the USSR. The USSR assumed that the "lend-lease" transfers of ships were, in fact, a "gift", and for years the USSR has refused to return them or make any settlement for payment. At the same time that the United States was insisting that the Soviet Union pay for the ships it kept or return them, it was transferring through the instrumentality of UNRRA direct gifts in the form of relief to those areas of western USSR which had been devastated and where immediate relief was essential.

It is clear that even the words which are used in defining the transfer of assets from one country to another can have important political connotations. The most obvious of these in recent years was "lend-lease" with the explanation that if it was used it didn't need to be returned. The logic of cessation of lend-lease with VE Day was difficult to understand at the time and became impossible when the Marshall Plan was initiated. In connection with the Marshall Plan, it should be noted that the concept of "dollar shortage" was the political equivalent of "lend-lease". Semantics are very important in international politics.

In terms of international politics such ill-defined but seemingly simple phrases are the "explanation" for undertakings which are of common interest. Thus there was a common purpose which justified the "Russian Protocol", the document which defined the quantities of military and other goods to be sent to the USSR during World War II.

When the fighting in that war was over, the magic word was "United Nations". The political objective which it represented was an international system of preventing war and assisting economic development. This system consisted of the United Nations agencies, including the United Nations itself, the technical bodies, the Monetary Fund, the International Bank, and International Trade Organization. The first of these to begin operating was UNRRA. However, the exact function of UNRRA was so uncertain and its jurisdiction so poorly defined that it was never used in Western Europe except for the repatriation of prisoners and other displaced persons. It was used to supply relief in the Eastern European countries, the USSR, and the Far East. While it was international in administration, source of funds, and area of application, it was also an American instrument for foreign aid. American members of its staff have reported that in the USSR it was known as "American UNRRA".

While UNRRA was trying to carry out its indefinite assignment, other American agencies in charge of overseas aid were not clear as to what they were to do. The American military forces who were on the ground in Europe were operating a vast relief program as part of their occupation duties. The diplomatic representatives and the lend-lease authorities were working through other channels with European governments to reestablish viable economies and governments. The machinery in Washington for putting some kind of consistency into the international activities of the United States did not function with any degree of coherence. Too often the specific decisions were the result of interdepartmental power struggles rather than an orderly administrative appraisal of the position of the United States in world affairs. No doubt the persons in the "international affairs" sections of each of the departments or agencies were convinced of the rightness of their positions, but the fact remains that the decisions came about as a result of the struggles between departments. The high quality of many of the decisions is a tribute to the considered and thoughtful appraisal of the merits of the issues involved.

If this analysis of our international political approach at the end of World War II may seem a little harsh, it is not so intended. It must be remembered that the interpretation of any given situation in the international field is subject to a high degree of uncertainty. Only those who are inadequately informed are sure of their judgments. Furthermore, even if one's appraisal is correct, it must be remembered that there are definite limits as to what can be done with the resources, material and human, which are at a country's disposal. Military power is extremely limited in what it can achieve by itself. Economic aid, whether in the form of gifts or loans and whether these loans and gifts are private, public or in combination, is limited in what it can do. Technical assistance in various forms is useful, but there is a tendency to exaggerate what may be accomplished with it. Propaganda, good, bad or indifferent, often backfires.

In summary, international political situations have to be lived with. They can be influenced within limits. The limits are tighter than most of us think. This is the basic reason for having more people acquainted with international situations. It is a fundamental merit in an old adage of American policy, "Stay out of other people's business as far as possible". The shift in the extent to which other people's business is also our business makes this adage hard to live with and it makes the problem of our foreign relations more difficult. It also makes foreign aid a major item in international politics.

It has been noted initially that the most dominant problem of international relations since World War II has been the relations between the USSR and the United States. While the long-run political objective of the USSR is the spread of communism, the immediate diplomatic objective has been to establish a one-to-one relationship with the United States. Immediately after the war and on every occasion since, when there was the slightest opportunity, the USSR has preferred to deal directly with the United States rather than with the United States in cooperation with the rest of the Free World. If the United States can be separated from its friends, they become easier to infiltrate and subvert and the United States is obviously weakened. The United States has resisted this attempt, and by and large has succeeded in maintaining a common front with its European associates who have mutual interests with it as far as the USSR is concerned.

Within the realm of foreign aid the most dramatic illustration of this tactic was the Paris Conference of 1949 when Molotov withdrew both the Soviet and satellite representatives from discussion of the Marshall Plan. He would have nothing to do with the attempt to work out a program for European recovery in cooperation with the United States and the other European countries. A more important objective would have been thwarted.

While the United States has succeeded in maintaining a position of cooperative working relations with its Free World associates towards the Soviet Union, it is clear that the interests of the United States and its Free World associates are not always identical. Within the United States and within the nations of the Free World there are many groups in competition with each other. This phenomenon and the way in which it reflects itself in the development of uncoordinated and sometimes conflicting foreign policies by different United States governmental agencies, has already been noted.

A similar struggle to use the power of the state to take care of their international private interests, thus making them public interests, takes place within the other countries of the Free World and the "nautral" countries. The interests of these countries are no more single

than are the interests of the United States. It is this struggle between various groups within countries as to their interests overseas and in competition with overseas groups in the United States which creates many of the problems of international politics.

How do these conflicts in various parts of the world bear on foreign aid? The most serious difference which the United States has with its friends in Western Europe is in the field of what is called "colonial policy".

The international political conflicts in this field are very great. In the Far East, in South Asia, in the Middle East and in Africa, the United States finds itself embarrassed because of conflict with European countries. In the Far East and in Southern Asia, new nations have taken the place of most colonies since World War II. With these new nations the United States has not found the going easy. This is not surprising, particularly since American interests in these areas were usually protected by the previous colonial government; and there had been little distinction between Americans and other foreigners during the colonial period.

The Chinese residents who have made such an important place for themselves in many of these countries had benefited like other foreigners from the favored position they received under aegis of the colonial powers. And the Chinese who are left in the countries with new national governments have not been particularly happy. Should they be citizens of the new government of the country which is often their home land? Or do they owe allegiance to one of the governments claiming to be the government of China? The conflict between cultures and the belief that better economic status is the result of special privilege, has made the present lot of the Chinese not one to be envied.

The United States has found American policy looked on with suspicion. American aid, whether military or economic, has often been regarded as an attempt to substitute American domination for that of the previous colonial power. Soviet propaganda has made this theme well-known, and it has received much credence.

At the same time the former colonial powers have looked on American aid with scepticism. The official anti-colonial policies of the United States held during the years that American commercial and religious organizations benefited under colonial rule, created attitudes in Europe which have made aid seem to be American intervention to replace European interests.

A sad illustration of these problems is seen in Indonesia where American influence was used in direct opposition to the Dutch objective

of reestablishing Dutch rule pending the establishment of independence. The subsequent inability of the Indonesian authorities to settle their economic relations with the Dutch authorities on a basis of mutual understanding has left the United States in a position of being looked upon with suspicion by both sides. Each knows that the United States has supported the other and has felt that any aid should be used as a lever against the other. The position of the Dutch as a key member of the Atlantic alliance and a leader of many policies in Europe favored by the United States, has made the United States unusually sensitive to any policies and activities opposed by the Dutch. At the same time an aid program in Indonesia might be extremely helpful in developing a strong independent Indonesia, another objective of American policy. Indonesia has recognized this but has been extremely suspicious of the good friend of the Netherlands. The anti-colonial feeling has limited the form and amount of American aid. At the same time, aid, both military and economic, has been received from the self-styled anti-colonial Soviet Union. The tragedy of this conflict in Indonesia is apparent in the deterioration of economic life. It is doubtful that any aid program could of itself have prevented this decline. The deep cultural cleavages which exist throughout the nation, the limited availability of technologically trained personnel, and the bitter struggle for political power between parties have all contributed. The strong Communist party has seemed to operate on the principle of rule or ruin with the hope that "ruin" might mean political rule for it.

In the reshaping of the colonial areas of the Far East and South Asia, the United States has been drawn into another series of problems as a result of the need to supply military aid. In Korea, the Republic of China (Formosa) and in Vietnam, American military aid has offset the military power of the Soviet Union and Communist China. But military aid, supplemented by economic and technical aid, has replaced to some extent the position of former colonial powers. The high local cost of developing military strength has hampered economic growth. But on the political side the United States finds itself not only supporting opposition to Communist states but also supporting governments, some of whose activities it disapproves. The governments are not run the way Americans believe the United States is run. The United States is caught between the horns of a dilemma. If it interferes too much, it is in conflict with its own principles of anti-colonialism and non-intervention in the affairs of other states. If it does not intervene, it is supporting activities of its allies which it does not approve.

Really wise men might have a solution for this kind of confusion in international politics of foreign aid. But most of those who have the responsibility for deciding from day to day what our agencies are going to do know that these problems have to be lived with and can only be worked out slowly. All know that the minimum requirements of

administration of these programs are the same as for domestic programs involving large sums of money. Problems of "conflict of interest" do not disappear because our agencies are operating overseas. The basic virtues of honesty and integrity, which at times seem to be forgotten, are virtues abroad as well as at home. The fact that the same inhibitions are not at work abroad as at home demands a disciplined staff which has in some instances not been as apparent as we would like.

In other former colonial countries where we have no military forces and our relations are primarily economic and cultural, our political problems are of no less magnitude even though of different character. Thus in India we run into difficulties because of the difference in political ideology between a government which has one attitude towards socialization and our own, dominated by another attitude. However, it would seem that wise men in both countries have discovered that in spite of the ideological differences there are sufficient similarities in the way in which things are done, that American corporations can operate with high degree of success and governmental activities need not interfere with the rapid development of the country. Direct aid, while limited, is possible because we are convinced that an independent nation with the ideals of democratic government and individual freedom is in the same category with our own. The well-being of our own country is closely linked with the well-being and development of countries like India. It is in situations such as exist there that the conflict with the former colonial power is of least importance.

In the Middle East and in North Africa even more complications between the various European and American interests have hampered any effective aid program. From a military standpoint, the United States and the other members of the NATO were anxious to build an alliance with the Middle Eastern countries. A whole variety of aids was possible. Military equipment and instructional teams, loans, direct gifts of cash for carrying out financial reforms, establishing stable currencies and encouraging foreign trade, technical aid in many forms, were all given to various countries under various conditions.

But the conflict within the Middle Eastern countries between communism and nationalism further complicated the situation. The bitter opposition to the development of Israel has made it impossible to deal with many problems. It has prevented any adequate program for the displaced Palestinian population which wants to return to its former lands in Israel. It has prevented any regional development of the Jordan Valley. The clash of the nationalism of individual countries with a broader Arab nationalism has introduced another cross-current.

The position of the British and French as they have gradually been withdrawing from the Middle East has been extremely difficult. They were so concerned by developments that war broke out between them and Egypt over the control of the Suez Canal. And in spite of the competition between the United States and the Soviet Union over economic aid for construction of the Aswan Dam in Egypt, they found a mutual interest in throwing their diplomatic and political weight into stopping the war. It would seem to have been so much gain to recognize that the issues involved were not going to be solved by the use of force from the outside. But the problems are still to be solved by other means. Major interests for the United States and other Atlantic powers still exist. It is no light matter in view of the strategic significance of the area and its people that the USSR has moved into the area with its own economic aid and that local communist movements have achieved positions of strength.

The interests of the European countries and the United States in the economic sphere are still large. They are concerned with the development and retention of the oil resources. They are also concerned with the protection of trade routes and transportation facilities which they believed are threatened. But the forces of nationalism, of cultural diversity, and political intrigue, both foreign and domestic, seem to make any aid program by itself of little use. The situation with which the United States is faced is one in which any program requires an intimate understanding of these other forces. Even with such an understanding, and there must be at least a few people who do understand, it may not be possible to work out a program which is of much effect in solving the pressing problems of economic and social development. In fact, an understanding of these forces may compel a conclusion that a major aid program cannot be used with any effectiveness. If there is a program, the artistry called for in its administration must be great indeed.

The situation in the Middle East is paralleled in North Africa, in Algeria, Morocco, and Tunisia. With regard to these countries, the complications of American relations with one of its oldest allies in Western Europe are very great. American aid has played a significant part in developing France's present position of strength. It has also been important in North Africa.

The key position of France in any European alliance is common knowledge. But France's interests in North Africa have led to repeated differences with the United States over the way in which common interests are handled. North African countries are concerned about American subservience to France. France resents American aid activities which seem to undermine the French position. The problems of France in North Africa seem to many members of NATO to be more than French Problems. But France still feels that those of Algeria are internal problems. (There is a parallelism in

this case between the attitude of some states of the United States towards the federal government in dealing with problems which are regarded by those states as falling within the category of "states rights" even when the federal government has other views. Solutions are no easier for Americans in such cases than they are for Frenchmen who are concerned about developments in Algeria.) And the French governmental steps to solve its Algerian problems may work out favorably in spite of the many skeptics.

At the same time the international political position of the United States is in no way made easier by the necessity of keeping its hands off. Not only is the United States embarrassed in North Africa if it favors the French position, it is equally embarrassed in Europe if it opposes the French. And if it takes no position, as it has tried to do in the meetings of the United Nations Assembly, it has the worst of both worlds. If one takes refuge in the device of trying to anticipate the outcome by saying "We will try to pick the winner and go with him," he may still pick a loser and be worse off.

The difficulty at the heart of these issues is, of course, the fact that the national interest of the United States is not clear and unequivocal. Nor is national interest of France unclouded. Within France there is a deep cleavage as to the policies which should be followed in North Africa. Any position which is taken by the United States is going to have supporters as well as opponents in France. There seems to be agreement within France as well as elsewhere that the solution, in spite of strong military measures, is not one which will be reached solely by military means. Economic development is believed to be essential not only for the residents of the area but also because of its possible contribution to well-being elsewhere. I refer not only to the exploitation of the oil and other mineral resources of the Sahara. I refer to the fact that a population with a rising standard of living in Algeria, (or anywhere else in the world,) makes possible an exchange of goods with other countries which is of mutual benefit. Along with this economic development in Algeria must go a political development. This also is agreed. The disagreement comes as to the form of organization and whether or how it is to be part of France. There are any number of possibilities.

The fundamental points have been made. The international politics of this situation are not something which can be solved by foreign aid itself. They must be solved by a combination of devices. The French have recognized that an international interest in the problems of French Africa does exist by the agreement to establish a Development Fund for Overseas Territories under the aegis of the European Community. However, as of now this is a strictly economic and commercial matter. How soon it might become significant in its political aspects remains to be seen. But the attempt to separate these problems in various categories will not stand up very long.

The foreign aid program in South America has been extremely limited by comparison with some of the other parts of the world. There have been a number of small military missions. There have been sales of minor quantities of military equipment. The largest amount of funds has gone for loans to various countries, some on a short-term basis and some on a long. A few have been loans for the building of major public works and several for the consolidation of commercial accounts in order to provide better terms of payment.

There has been much discussion among some Latin American diplomats and political figures concerning the development of a major aid program in which the sums of money would more nearly approximate those which have gone to other parts of the world. The usual answer of the United States to this kind of suggestion has been that private loans were more suited to the internal development of the Latin American countries and that as long as private property was adequately secured there would be no trouble in securing adequate funds. This answer has never been satisfying to responsible Latin American authorities.

Quite recently a shift in American policy has provided for the establishment of an international lending agency in response to this demand for a Latin American development bank. It is too soon to appraise the results of this new development.

Latin American nations originated in an earlier era of independence, so that for many generations they have not been subject to colonial control. However, the patterns of land holding and the cultural organization of the countries, which came from Europe, have developed along with indigenous Indian institutions. They have continued to have a profound effect. Numerous modern revolutionary movements have been directed against the domination of large land holders and the church in social and political affairs. These phenomena are not the type of problem to which foreign aid can be of much help. Only local forces can be successful in modifying them.

There are some evidences that the availability of funds can make little impact. For example, during the Second World War, Latin American countries were able to build up large balances in unspendable foreign currencies which could have been used after the war for large-scale developmental undertakings. Most of those funds were unprofitably used and little remains as a result of their use. Actually the influence of the United States was not entirely lacking in the misuse of these funds. American commercial policy of the period advocated the development of freedom of trading at a time when rapid expenditures of funds could do little more than create inflationary situations. But one can hardly argue that this point of view was vigorously opposed in Latin America.

In the field of commercial policy generally the United States has objected to such suggestions as those having to do with commodity stabilization. Latin American officials always remind us that our principles have been violated without hesitation in dealing with such American commodities as wheat, sugar and oil.

In the development of aid policy toward Latin America, however, it must be remembered that the major forces which are at work in the rest of the world are also at work in Latin America. I refer particularly to the forces of communism. The extent of its penetration into Latin America is difficult to appraise. However, it is well known that there are strong Communist parties in some countries and that Communist influence on trade can make itself felt in the most unexpected places. There have been a few instances when Soviet purchases and sales to Communist countries have seemed to have strategic political implications. Unfortunately it is in this area where American policy seems to have the least flexibility. This seems strange in South America where during World War II preclusive buying was a major activity.

The political problems incident to foreign aid have been shown to fall within certain broad categories. The first of these has to do with the major struggle between the Soviet Union and the United States. The United States and the rest of the Free World must always remember this overriding consideration. A minor aspect of the aid program is the grants to the Soviet Union on a humanitarian basis where large-scale starvation and suffering was involved. It is to be regretted that favorable political results which might have come from such aid have been resisted strongly by the Soviet Union. Major internal propaganda efforts have been undertaken to offset the goodwill created with the Russian people.

Another minor aspect of foreign aid to Communist countries has been the loans and grants which have gone to Poland and Yugoslavia. The political implications of this aid have been perfectly clear. The presumption on the part of the United States is that the more independent of the Soviet Union such countries as Poland and Yugoslavia are, the better chance of weakening the control of the Soviet Union in their policies. While this use of funds has been sharply criticized by some people, the evidence of at least partial success seems conclusive.

The second major group of problems which has been discussed stems from former or continuing relations of the European countries with their colonies. The historic policy of the United States in encouraging the development of independent nations from colonial territories has created tensions with both the former colonial powers and the nations which are in the process of formation. Aid to the colonial power is resented in the colonial territory. It is easier for the United States to adjust to those

powers who have adopted a conscious policy of encouraging independence in various forms than to those colonial powers which have no such policy.

Within this group of problems fall those which arise from making grants for military purposes. Problems originate in the conflict of jurisdiction with local civilian authorities over American troops resident abroad, in acquiring of land for military purposes, and in agreements on financing the purchase of different types of military equipment. Last, but not least, are the problems which arise over the utilization of nuclear weapons.

A third group of problems are those originating from aid designed to encourage economic development. This aid consists of grants and loans which may arise from any one of a number of agencies, either American or international. A loan may be for purposes of major capital investment, financial stabilization, or short-term commercial financing. The country wishing the funds is usually prepared to fit them into a definite program of development. At times the program will be questioned by the lending agency. Such differences of judgment often lead to long negotiations. Charges of "intervention" often arise. But such issues can be and normally are compromised.

It should be self-evident, but unfortunately it is not, that only those countries whose people have had widespread training in modern science, technology and administration will have rapid economic development. Unless this type of education is generally available, purely economic and military measures, presumably with the purpose of rapid economic development, have little effect. When foreign interests undertake to develop resources in countries lacking in these fundamental skills, the contrasts in standards of living are so great that they build along with economic development, social divisions of very serious character. When these divisions have no opportunity for constructive solution major political troubles ensue.

There are, however, other issues such as those involved in loans to support activities which are normally regarded as private business by the United States. Or competitive supplying firms are anxious to get the business. Or American firms believe that they should have the business because the funds are originating in the United States. In practice all of these problems lend themselves to solution once they are brought out into the open where they can be discussed with frankness.

It is sad that problems which should produce the least difficulty sometimes seem to create the most. The problems referred to arise from the competition between private interests in countries which obviously should cooperate. One illustration: Iceland has an unusually important strategic location for the North Atlantic Alliance. An important air base is located there and American troops are stationed on the island. But

the economic activities of the island turn primarily around fishing; and the sale of fish from Iceland is in sharp competition with that of other European countries and the United States. The value of the whole fish production, which is of major importance to Iceland, is minor as far as the costs of security are concerned. However, the competitive position of American fishermen on the eastern seaboard is such that the sale of Icelandic fish has been practically prohibited. The result has been that the Soviet Union has appeared as the good neighbor and has purchased most of the Icelandic fish. Our partners under the North Atlantic Treaty, the British, have come close to shooting in the conflict over the control of the fishing banks. The history of this incident is well known, and yet there are speculations as to why Iceland is not more friendly toward the North Atlantic Treaty Organization, and why the Communists are still able to elect strong representation in the Icelandic parliament.

Such problems are certainly soluble by means well within our negotiating capacity if we take them seriously. The interests of a relatively small group certainly can be satisfied at a cost less than that of weakening an important security link. In the United States there is a long history of the use of subsidies to care for political costs. Billions of dollars go every year to this type of expense. It should be entirely possible to satisfy the parties to such a conflict rather than to allow it to weaken our international security.

Finally, it is important to remember that foreign aid, even when it is most successful, contains certain built-in difficulties. The net result of foreign aid should be to strengthen a country and improve its relations with other countries. Ultimately the receiving country can achieve a greater degree of independence. Insofar as the greater economic strength rests on close economic ties with other countries, there is little danger of economic independence becoming a handicap to good relations. But there is a major danger when any country, whether communist or non-communist, establishes an economic autarchy.

This danger has not passed. It is an objective with some friendly countries. With the Soviet Union it is a fundamental tenet of policy. There is no such thing as creating "markets" for American products in the USSR. The Soviet Union has frankly stated that its objectives are temporary in its trade with the Western World. It will buy products only so long as they are not produced in the USSR; but it will become completely economically independent just as soon as possible. In a nation of the size of the USSR and with the natural resources which it has at its disposal, this is a possible policy. But it is imperative that we be aware of this and not fall victim to the blandishments of the kind of trading system which leaves the bargaining counters in the hands of the Soviet. Economic autarchy has its purposes, but they are not those of a free trading society.

The stronger a nation receiving aid, in whatever form, the greater the danger of its becoming desirous of following a policy of autarchy. All nations would like to be independent. This is indeed a happy goal until it is learned that the richness of a nation's life, as well as the life of an individual, is closely linked with its dependence on others. This dependence can be destructive of self-respect unless the giver discovers that he, too, is dependent on the receiver; and in a genuine sense foreign aid becomes mutual aid.

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THE UN AND THE U.S. NATIONAL INTEREST*

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In the field of foreign policy, one of the most intriguing differences between the practitioner and the theoretician lies in the realm of doctrinal controversy. The prime controversy that has agitated academicians in recent years is one that is now very familiar. It is the alleged conflict between Realism and Idealism.

At its heart this argument has to do with the connection between personal ethics and international politics. In its most explicit form this argument involves appraisals of the institutions of collective inter-governmental action our age has erected in profusion, particularly the global variety of political international organization that has taken shape in the League and the UN. It is here above all that our intellectuals have sometimes tended to become a trifle unscholarly as they hurled at each other the epithets of "Cynic" or "Utopian Dreamer." Our diplomatic tools in the form of inter-governmental institutions have in this sense been made to carry a heavy supercargo of freight bearing on ends and means, the nature of man, and the general residuum of the eighteenth and nineteenth century debates about the perfectibility of man and the inevitability of social progress.

Now, in the hurly-burly of the bureaucracy, these issues are rarely debated in philosophic terms. This is not to say that policy is formulated in a conceptual vacuum--far from it. Certainly every policy and every action must of necessity rest on some set of premises and assumptions, whether they are articulated or whether they are silent, and there have been times when American foreign policy has come to rest on one side or other of the argument. But far more often American foreign policy acts as though there

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* I have used as the basis for this analysis material prepared originally for the Church Peace Union, New York, in the late spring of 1959.

were a general consensus in our country which partakes of both philosophies--the realistic and the idealistic. If I had to put the best face on it, I would say that we have tended to be idealistic in the long run and realistic in the short run. And perhaps this is the only approach that is both sane and morally satisfying. It is not simply because, as someone has pointed out, in the long run we'll all be dead. The very separation of short-term and long-term is a step toward a more rational attack on our problems of formulating goals and selecting procedures.

I realize that here we are speaking of ends and means. This is an era in which moral and ethical connotations penetrate the political data. One of the curious phenonmena of foreign policy is the confusion between ends and means. I do not merely mean the intellectual confusion of the individual. The means in foreign policy often tend to become ends in themselves, as with the aspirations for a rule of law in the West, or the revolutionary tactics of international Communism. It can be argued that history is a process in which ends never do materialize, or at least change appreciably, in the course of striving toward them. The United Nations started out in the minds of many as an end in itself, but now is perhaps more commonly viewed as a means toward other ends. The proper relation between ends and means, between goals and resources, remains perhaps the central problem in American diplomacy and policy making.

On the few occasions when our long-term goals are articulated they usually sound platitudinous and meaninglessly utopian. Nonetheless, it is perfectly clear that we do have certain long-range goals and that periodically our sights are set upon them. Those goals grow out of our basic social values, as well as out of an idealized vision of what a perfect world looks like to a society that enjoys rather than repudiates the status quo. We hold a picture of a disarmed and peaceful world engaged in constructive tasks, in which disputes between nations would be settled by orderly legal processes, and in which economic resources would be harnessed to tasks of human and social welfare. Certainly our image of that world would be based on individual freedoms, as well as on the freedom of political units to choose their own form of government.

Our short-term goals are of a quite different nature. To be at all plausible, they have to represent a realistic evaluation of the situation that confronts us. This is clearly a situation in

which our society is under massive assault by a determined and dedicated force. Our immediate goal must thus be one of self-preservation and indeed survival, and from this flows our entire contemporary strategy. Here we must take the world as it is, not as it ought to be. We believe in disarmament but we must arm to the teeth in order to discourage others from taking advantage of us. We wish to see disputes settled in a legal and orderly way, but we confront forces that want not to change the existing law but to substitue an entirely different legal and political order. We want to use our national and economic resources constructively, but must expend them prodigally on a technical race of essentially military hardware.

In the main, it is no wonder that people both at home and abroad are confused about American motives and American actions. Some of this confusion is built in, and cannot be changed, given the kind of problem we are dealing with. Some of it results from the inability of a pluralistic society based on a broad consensus to respond with sufficient flexibility to rapidly changing demands, a capacity which totalitarian governments enjoy in large measure. And in another way much of the problem is created by the nature of our opponent, who brings to the fight great tactical advantages--including above all the clear understanding that he is in a fight.

In this setting, relationships with our enemies, with our friends, and with the neutrals complicate our already overburdened diplomacy. Diplomacy more than ever must be harnessed to a clear understanding of purposes. In this setting, great meaning attaches to the diplomatic tools available to us, and the wisdom with which we use them.

Sir Harold Nicolson would doubtless acknowledge only one essential tool of diplomacy, and that is an honest, wise and tolerant man. And who will argue that in the final analysis this is not so, whatever the institutional paraphernalia?

And yet the institutions of diplomacy, in the broad sense, tell the story of our age, for better or worse, and the only real-life problem is whether we use or misuse them to ameliorate the baffling problems that beset us. The argument about ends and means rages on. The UN is not alone in having to carry much ideological baggage of symbolism and wish-fulfillment, along with utilitarian functions. Some see NATO's prime significance as a step toward Atlantic community, federation, and so on. And so it might be.

But unless the goals are properly sorted out along a realistic time spectrum, the possibly fatal error could be made of overrating potential, and losing sight of short-run imperatives. A recent unsuccessful French proposal to use NATO as the Western world's prime agency for economic aid to underdeveloped countries illustrates the possibility that overrating could kill NATO no less than underrating could kill the UN, both of them vitally important tools for doing the right job at the appropriate time.

We have only a limited number of cutting edges with which to dig into our real-life problems. Perhaps the principal diplomatic tool continues to be traditional bilateral diplomacy. The UN has not furnished a substitute for this diplomacy. Indeed, perhaps its prime value is in adding another rather useful place where diplomacy can be conducted--as well as a place where it can become complicated. Another tool lies in our system of military alliances--including NATO, SEATO, ANZUS, and the Baghdad Pact nations--in which we take responsibility for the security of approximately forty-five countries in the world. Another tool lies in regional associations such as the Organization of American States in which hemispheric problems can be dealt with within a mechanism especially suited to the job and with at least the attempt to see problems in a larger than national context. And yet another tool of diplomacy for this purpose lies in the universal or global system of international organizations of which the UN is at the center.

Because I am more familiar with the UN and because some things ought to be said about its values in the situation I have described, I would like to suggest some aspects of the role of the UN as a tool of American diplomacy in world politics today. In doing so I will return to the distinction I suggested between short-term and long-term objectives and see what illumination this may provide about the uses of the UN.

First, let us look briefly at the short-run objectives of American foreign policy. Above all, the requirement here is for security for Western civilization and specifically for the United States. The question must be asked how the UN can be useful to us in this case. It is obvious that the UN has built-in drawbacks. Reality has shattered the original assumption that the Great Powers would cooperate in setting up an enforcement system. The UN is sometimes asked to act as though it were a government while in fact it has no governmental powers. Unlike the League of Nations

the UN was not designed to make the peace after World War II but was intended to maintain the peace which would be created by the victors of World War II. I do not need to point out that the basic peace treaty with Germany has not yet been drafted and that we are in the middle of a crisis arising out of that continued unresolved situation.

Certainly if the Soviet Union, either in a moment of irrationality or desperation or because we allow our defenses to lapse sufficiently, decides upon an attack upon the United States to take us out of its way, the United Nations can do nothing to prevent this. But if we assume--as we must--that the present situation of no-war-no-peace will continue indefinitely, some of the chief danger points arise out of situations which may not involve a direct attack by the Soviet Union on the U.S., but which could create conditions that would threaten the over-all maintenance of peace and security. In these situations the existence of the UN may be absolutely vital. Its presence might make the difference between war and peace. It is ironic that the concepts of inter-dependence and the indivisibility of peace which our modern internationalist philosophy has championed also carry the dangerous possibility of implicating all the contending great powers in almost any situation that might arise anywhere. It therefore makes good sense to me that one of our strategies in this period should be to seek out and use techniques which will moderate such situations leading to violence, situations where the Russians and Americans are not necessarily involved at the outset, but which if allowed to continue or to spread might tear the whole fabric of peace.

What this suggests is the need for political and quasi-military forces, not belonging to either side, which can be made available in such brush-fire situations to damp down the fires and help the parties to find their way out. The UN Emergency Force in Suez was an excellent case in point and it still maintains an uneasy peace in that area. The UN Observation Group in Lebanon last summer was another case in point, beclouded somewhat by strategic considerations which caused the Western powers to act unilaterally. But the principle of utilizing small and medium-size powers through the UN in brush-fire situations which we can confidently expect to continue to arise in our life-time seems to me very promising.

In this kind of age where the impulses to change would normally lead to violence, violence is at least to some extent suppressed.

The American policy of renunciation of force has added a powerful deterrent to the outbreak of violence. Yet at the same time if it has not been accompanied by provisions for peaceful change it will simply bottle up the pressures, which will then explode with even greater violence. Laws of political physics have rarely been known to fail in such situations.

Now, peaceful change is a process which customarily, at least in domestic life, calls for a legislative power which can vote to change the law and furnish a new framework in which the law can function. There is no such legislative power on the world scene. The UN General Assembly--the closest thing to a world legislature--has only the power to recommend. As a consequence the process of peaceful change must depend for its success on accident, and on skill of individual statesmen, diplomats, and negotiators, as much as on such multilateral actions as the UN's decision to partition Palestine, or help Indonesia to work out her independence, or determine the disposition of the former Italian colonies. In the case of Trieste, for example, such change was brought about by painstaking efforts of American and British diplomats. In the case of Hungary the attempt toward change was suppressed by the Communist overlords. In the case of Suez, Nasser's unilateral change of the situation was resisted forcibly by the British and French and Israelis, but the world community acted to prevent them from reversing the change that had taken place. In other words, there is no single pattern for the contemporary situation. All one can say is that the sheer logic of the situation calls for redoubled search for orderly means of peaceful change.

We can also see that a "third party" in such situations is vital. The UN itself, consisting of eighty-two governments committed usually to one side or the other of these disputes, may not be the best source for evenhanded justice and dispassionate wisdom in the world. The International Court of Justice cannot be used in most of these situations because the disputes often tend to be political in nature rather than legal. The role of the Secretary General, however, has proven to be absolutely indispensable in this kind of climate.

Another new departure which should not go unmarked is the use of Secretariat personnel--on the initiative of the Secretariat rather than on the initiative of any UN body--mediating a recent dispute in Southeast Asia. If the services which are supplied

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by these third parties consist only in providing chewing gum and baling wire to hold things together until time has healed the wound or changes can be worked out peacefully, they are still indispensable in keeping a semblance of peace while history is working its own process.

Another area in which the UN might be useful is to take situations out of the arena of disputes and put them on ice, so to speak, by applying the anesthetizing techniques of multilateral diplomacy and multilateral operation. The UN here offers techniques which have not been used so far. Article 81 of the Charter provides that the organization itself may be administering authority of a trust territory. Areas such as West New Guinea represent a thorn in the side of peace so long as the Dutch hold on--which they do unhappily--and the Indonesians see a chance to acquire a new piece of real estate--which they manifestly do. Should not our policy be to urge placing it in the one set of hands no one could object to--the UN itself?

The Berlin situation is illustrative of the breadth of thinking called for in examining available diplomatic tools. It occurs to me that the UN might offer a number of services which could help to moderate the situation and possibly even to freeze it for a time in our own interests. It represents a category of means to add to others available to us. For, if blockade or other violence took place in Germany, the past record suggests that with or without a policy we would turn to the UN in the hope that, as has sometimes happened in the past, it would somehow find ways of getting the parties off the hook, however untidy it left the situation. But we are slow to make purposeful use of UN machinery to improve a situation which appears to be increasingly difficult and unstable, if not downright untenable in the long run.

I would recall the situation in the summer of 1956 when President Nasser of Egypt nationalized the Suez Canal. In the intensive negotiations which took place that summer between the Western allies and other interested states no serious consideration was given to using the United Nations. The diplomatic tool chosen by our chief negotiators was a conference of friendly, agreed states. This failed to achieve any of our objectives. In my judgment the UN might have been used to accomplish a number of purposes. With proper political preparation I think it would have registered decisively the opinion of the world community

that the Suez Canal was an international waterway in which the rest of the world had certain interests and rights. The price would probably have been recognition of the sovereignty of Egypt over the Canal--which of course now is undisputed. An international presence in the Canal might well have been acceptable to Egypt at that time, whereas a British or French presence was not. Suggestions were made in the State Department for a UN agent-general in the Canal, or a conservator of the resources, or some observers, or in any event some world presence to sit alongside the Egyptians and guarantee the one thing which the Western powers felt strongly about--the continued access and availability of the Canal to their ships.

As it turned out, Nasser won his point in a context in which it was no longer possible to place an international presence in the operations of the Canal. The UN troops are there on the sufferance of the Egyptians, and would in any event probably not choose to stay to enforce the rights of the Western powers. You will notice, incidentally, that when Nasser nationalized the Canal he guaranteed that there would be continued free access to all--with the obvious exception of Israel; he has delivered on that promise, depriving the user powers of the one legitimate justification for intervention with force.

It seems to me impossible that the same kind of situation could arise in West Germany. We speak loosely of the possibility of blockade. It appears to me highly doubtful that such self-defeating provocation would be engaged in, at least at the beginning. Rather, I would think that if the routes of access into West Berlin were turned over to the East Germans it would be done with the most elaborate assurances of free passage and continued access. This would once again deprive the Western powers of a casus belli, and force them to make an issue of the role of the East Germans, an issue I do not think would be well received in the UN, where most countries are very jealous of their sovereign rights.

It therefore strikes me as sensible to consider now the kinds of presence which UN observers or forces could provide at the checkpoints, and also in West Berlin. In the future, assuming as we must that change will come to Germany as elsewhere, either on our initiative or despite us, the UN may have a role beneficial to our interests in supervising the formation of some reunion of the two German states, if that comes to pass. A UN presence can provide an additional incentive to the Communists to behave themselves. The possibility of such change taking place by

explosion or external pressure would be minimized, and surely this would be in the interests of the entire non-Communist world.

Still another dimension of our short-term objectives lies in the economic field. The Communists are conducting relentless economic warfare against our interests all over the world, and I do not think we have sufficiently examined the uses of the UN to meet this challenge. Our goal, it seems to me, is to persuade what we used to call the backward peoples of the world that their goals of economic and social reform, and modernization, can be achieved without necessarily subjecting themselves to a small conspiratorial minority whose purpose is not their independence and national advancement, but rather the creation of a universal empire. We must ask ourselves whether bilateral aid has proven to be the best tool for the achievement of this purpose. We have not seriously examined the possible uses of the UN in this field, largely because our policy on this count has been dictated by budgetary rather than political and strategic considerations.

Perhaps the chief use of the UN in getting through the dangerous short and middle-run period in history is in supplying a place in which contact can be maintained with the Russians, and as an institutional setting with open doors into which they can pass when and if changes within their own society bring about a realization that they will be accepted by the rest of the world as a great power but not as an apocalyptic force of conspiracy and revolutionary change. From a practical standpoint there are excruciating difficulties under certain circumstances in maintaining contact with these people through traditional bilateral means. The UN furnishes some advantages here which we must never lose sight of. There is probably an equal importance attached to the UN as a means of reaching and maintaining contact with the forces of change elsewhere in the world, in Asia, the Middle East, Africa, and Latin America. Indeed, to these people, the UN often provides the forum where above any other they can bring their problems and their aspirations before the rest of the world. This is one of the principal sources of Western concern with the trends that are taking shape in the UN of the second half of this century. And yet the opportunities may outweigh the embarrassments and inconveniences if--and only if--we plan intelligently to use them with purpose and understanding.

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The immediate day-to-day foreign policy decisions which are facing us are on issues that are largely of other people's making. Beyond them there is another level where we might move ahead and try to give greater force to our ideas and to our ideals. It is here that we should be looking for action that will connect with our long-range objectives. The path here, as I see it, is to try to develop certain common interests, which may start out on a limited basis but can ultimately develop into world-wide interests.

Diplomatic resources, in the form of agencies and other tools, need not be limited to short-run, crash situations. To the extent that we have a concrete goal, and if that goal is plausible and politically realistic, U.S. foreign policy could well devote some of its resources to planning and limited action to achieve our goal, no less than the Communists devote their resources and use the tools of diplomacy to move toward their broad strategic ends. The key to this door, I believe, is in a new approach to the problem of community of interests that lead, in turn, to common action.

Now certainly we should continue to search for common interests with the Soviet Union. Some of these may already exist and it may well be that, in the realm of security, agreement can be reached with the Soviets on elimination of testing and, possibly in the future, some agreement on surprise attack. Perhaps ultimately there can be some agreement on Antarctica; perhaps something substantial in the medical field; conceivably something in the field of space, although doubtless not at the present time. But my point is that, if our search for other common interests depends on a mutuality of understanding and common values with the Russians, I think we are licked before we start. We can and should gamble that one day that understanding may deepen, and we should pave the way for it, and leave all the doors ajar. But today the search for common interests needs to be differentiated and sorted out.

The aim should be to devise actions to move in limited ways toward our own concept of a better world order which can eventually emerge from the present disorders and strife. If this is a feasible policy for the United States to follow in the present world situation--and I think it is--how can we use the tool of diplomacy that from the start seemed to symbolize a better kind of world order,

but failed to live up to expectations?

In terms of long-range objectives, I believe the thing that has defeated the UN is the lowest common denominator theory. A world community was postulated from which law and order would flow, but the basis for true community--a genuine consensus--was lacking. We have clung to our long-term vision but as its major premise collapsed it became drained of any real meaning. To me, the fallacy in this reasoning is its all-or-nothing nature. Such an approach is doomed to futility and failure in an age of religious wars.

Actually, when the need to overcome this failure was seen to be great, we found a way out of the dilemma by organizing regional and collective security organizations outside of the UN. In this way communities of interest and value have been given recognition. Law and other organizing principles depend on such community. Indeed, even apart from the Soviet Union, our earlier approach to the international recognition of human rights foundered on the absence of such a community in much of the non-Communist world.

What I am asking here is whether, in the same way we succeeded in organizing a limited form of collective security, we can develop some other common interests in the form of action, within realistic limits, in pursuit of the longer vision. Now it is doubtful if the majority of other nations would go along with any scheme to develop these interests outside the framework of the UN. This means that we need to find courses of action that do not depend on securing the agreement of the Soviet Union, but which can still be pursued within the United Nations. These should be things which we conceive to be in our national interest, but which are also in the larger interest, and possibly even in the interest of the Soviet Union. One day the Russians might join, just as they came to join the International Atomic Energy Agency, and may well join the UN space agency before they are through. The proposal, in short, is to try to make a break-through here by the creation of imperfect, incomplete segments of community, but solidly based on shared interests and values.

I will make a couple of illustrative suggestions as a partial answer to the question of what we can do realistically except wring our hands, mark time, or choose solutions such as Charter revision which are uncommonly stupid tools of diplomacy because, while they are aimed at the Russians, they can be sabotaged by their victims.

We speak of a rule of law with frequency, but with considerable indifference to what it really means. President Eisenhower spoke in his State of the Union message recently about new uses for the International Court of Justice. I myself have written pessimistically on the potentialities of legal methods in an age of rather lawless politics. But particularly if the U.S. feels it can now accept a more binding commitment, I am very intrigued with the possibility of the UN, on American initiative, drafting a new protocol on compulsory jurisdiction of the Court, which would be binding on those who joined it only as to matters involving those countries. What if fifty or forty or even thirty nations agreed to use legal processes to resolve legal disputes among themselves? If only twenty countries subscribe we will still have a legal order encompassing twenty countries with the same values of justice, without tying our hands with others. Thus a beginning will have been made, and those who are ready for more enlightened relationships will be offered a means of action, instead of being dragged down always to the level of the most narrowly nationalistic and shortsighted of the nations.

I realize that the Statute of the Court already provides a means for the compulsory jurisdiction of the Court, such as it is. I see great political virtue in doing it afresh and publicly, in a special conference called by the UN at the suggestion of the U.S. government. There is also virtue in having the UN call such a conference rather than having it negotiated at the UN itself, since it would not have to be limited to present UN members. I don't know if those who followed our lamentable lead in attaching reservations to the Statute of the Court when we accepted it in 1945 would follow a new American lead in abandoning those reservations. But there is only one way to find out, and it should be done with maximum political advantage--and maximum U.S. Senate participation. If the Russians didn't come in for fifty years, there would still be the beginnings of a more lawful world with respect to those legal disputes within that world, the adjudication of which would not be dependent on agreement with the Soviet Union.

Outer space is another area where we might be tending to give up before we really start. A disarmament agreement having to do with the control of ballistic missiles or of military outer space objects does depend exclusively on agreement between the Russians and the Americans, and anything else is a delusion. But the present UN program has been purposely disconnected from

the disarmament problem and has to do only with peaceful applications of space technology. Why not have fifty--or forty--or thirty nations agree on an action program designed to harmonize their efforts bearing on the peaceful uses of outer space? A separate treaty could be signed which would bind the signatories, but without in any way affecting military competition with the Russians. A coordinating UN agency or body would be set up, and the U.S. scientific community would be mobilized to advise and help it, thus incidentally giving some of our scientists an additional form of political motivation that they keenly feel the need of. A drafting group on space law could be set up. Such an agreement could call for a research pooling within the framework of the UN, better public information and understanding about space, which is desperately needed, and a sense of participation by many countries which may have something to contribute. Its prime purpose would be symbolic, and it is high time we understood that three-fourths of the UN is symbolism. But it would have content as well. The parallels with the International Atomic Energy Agency are obvious, even to the point of the "haves" contributing ex gratia out of their stockpiles, so to speak. Even before then perhaps one of our American shots ought to be a "UN shot" and have the UN flag on it.

In the same vein, new technologies are getting so far ahead of our political capabilities that the old laments about the political lag in this field have become monstrous understatements. We ought to consider making serious proposals, through the UN, for intensive investigations bearing on the solution of common global problems that will soon affect every human being, building on the experience of the International Geophysical Year. Scientists are in general agreement that solutions must be found urgently for such common human problems as dwindling water supply--the cheap conversion of sea water, particularly in the arid zone; the need for sources of energy--atomic or solar power; over-population; disease; and so on. Agencies of the UN are working on some of these, but there might be great advantages in moving them to the level of public and politcal impact. Perhaps the British method of the Royal Commission should be adopted, with blue ribbon special bodies set up ad hoc to seek break-throughs in each field, following where possible some of the patterns set by the IGY. Their reports could package whole areas of problems, put a price tag on their solutions, and bring them to world attention with maximum impact.

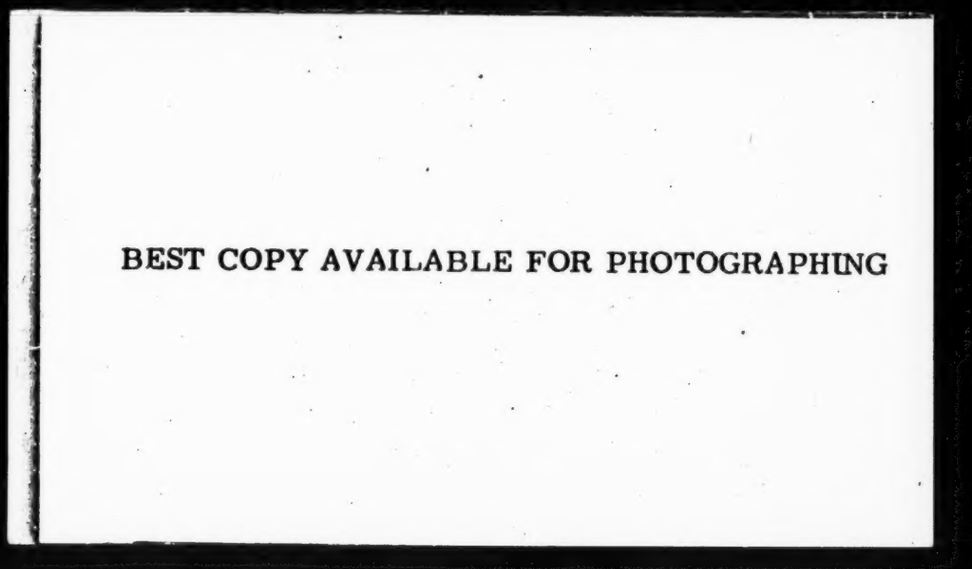
Still another U.S initiative would be to offer to internationalize the Panama Canal, under as stringent conditions as we wish, perhaps analogous to a strategic UN trusteeship, and on a reciprocal basis, with the aim of trying to take strategic international waterways out of politics as future sources of conflict. The list of possible uses of the UN to achieve other broader purposes could be extended further.

It used to be that the idealists were by definition "for" the United Nations, and people who called themselves realists were, at a minimum, skeptical about finding any real diplomatic and political values in it. I hope what I am suggesting now is a new application of realism to the UN for the purpose of carrying out impulses which might be called idealistic, but which in the long run might be the only avenue of salvation for our society. Here realism lies in finding alternative ways to carry out important purposes in a way that will utilize and in the process strengthen the UN.

I have not tried to recite here all the possible values of the UN or, conversely, all of its defects. An important value of the UN as a tool of Western diplomacy both in the short and long run has to do with the political education of the new states, many of which must be called micro-states, now coming to membership in the society of nations. These states, in combination, will increasingly hold a high card in the UN as they learn to play both sides against the middle and to dominate the proceedings with their parochial views and interests. I can think of no better way to educate them regarding their responsibilities and also about U.S. purposes than to trump that high card by focussing attention on concrete goals that effect them along with everybody else, and on which the U.S. is prepared to lead the way.

Our diplomacy has a tactical problem here to get the support of other nations to bring about certain ends that we wish to achieve, particularly if the Russians are opposed. But what we would propose has no direct connection with the Cold War, and moreover has universal appeal. I do not think our problems are hopeless of solution, although I do not minimize the acute difficulty we experience in responding rationally and potently to the challenges being thrown at us. I do think that if we can transcend some of the deep grooves into which our official thinking has tended to fall, we might well rescue an important national and international asset from inevitable decline. Above all, we would, I think, find

that the American role in world politics could become more satisfying to us, and once again the hopeful agent of history that we were once taught was its deepest meaning.


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THE WARREN COURT AND CONGRESS

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The Warren Court and Congress

It certainly came as no surprise when nineteen Southern Senators and eighty-two Southern Representatives joined in issuing a "Manifesto" back in March of 1956 which read in part:

> "...We regard the decision of the Supreme Court in the school cases as a clear abuse of judicial power. It climaxes a trend in the federal judiciary undertaking to legislate, in derogation of the authority of Congress, and to encroach upon the reserved rights of the States and the people..."
>
> " The Supreme Court of the United States, with no legal basis for such action, undertook to exercise their naked judicial power and substituted their personal political and social ideas for the established law of the land."[1]

It was to be expected that Southern politics would have found the decision in the Brown case distasteful and that any stick would do to beat the dog.

It did come as a bona fide surprise to this observer, however, when men of the stature of Judge Learned Hand, Professor Edward S. Corwin and the Chief Justices of the States made precisely the same allegation without reference to the schools cases. Corwin, pointing to the Yates and Watkins decisions, charged "that keeping the court out of legislative territory" had become a "real problem".[2] Learned Hand in his much publicized Oliver Wendell Holmes Lectures at Harvard expressed the same view in a more complex and comprehensive way. The nub of his thesis was that:

> "...The authority of courts to annul statutes (and a fortiori, acts of the Executive) may, and indeed must, be inferred, although it is nowhere expressed... However, this power should be confined to occasions when the statute or order was outside the grant of power to the grantee, and should not include a review of how the power has been exercised..."[3]

The Conference of Chief Justices (State) at its annual meeting, 1958, approved a report of its Committee on Federal-State Relationships as Affected by Judicial Decisions which was highly critical of the present court.[4] Although much of the report criticized "supervision of state action by the Supreme Court", it was clear that they felt that the Court had encroached on the functions of Congress:

> "Second only to the increasing dominance of the national government has been the development of the immense power of the Supreme Court in both state and national affairs. It is not merely the arbiter of the law; it is the maker of policy in many major social and economic fields. It is not subject to the restraints to which a legislative body is subject. There are points at which it is difficult to delineate precisely the line which should circumscribe the judicial function and separate it from that of policy-making. Thus usually within narrow limits, a court may be called upon in the ordinary course of its duties to make what is actually a policy decision by choosing between two rules, either of which might be deemed applicable to the situation presented in a pending case.

> " But if and when a court construing and applying a constitutional provision or a statute becomes a policy maker, it may leave construction behind and exercise functions which are essentially legislative in character, whether they serve in practical effect as a constitutional amendment or as an amendment of a statute. It is here that we feel the greatest concern, and it is here that we think that the greatest restraint is called for, there is nothing new in urging judicial self-restraint, though there may be, and we think that there is new need to urge it.

It is significant that of the nine chief justices and one associate justice who composed the committee which drew up the report, only two came from states which have been intransigent on the problem of integration.

The weight of the prestige of the venerable judges, coupled with a political scientist's conditioning by his law school friends to believe that the /a-school trained acquire a special mystic insight which enables them to discover the real meaning of court decisions, was enough to send me scurrying back to read the cases again. But further study and analysis of the decisions of the Court failed to change the impression which I held earlier, that these decisions reflect real deference to Congress by most of the members of the Court, surely by a majority.

The Court's Duty to Keep Congress within Constitutional Bounds

In any attempt to measure the Court's performance vis à vis Congress, it is necessary to have a standard by which to measure performance. Fortunately, there is consensus on the two most important criteria for judging the Court's performance as it pertains to Congress. It is generally agreed that (1) the Court should defend the Constitution from invasions by Congress, and (2) the Court should not arrogate to itself the law-making function of Congress. In respect to the first of these criteria, I shall not bore you with the reasons why. The best explanations are still the ones with which you are familiar, Hamilton in The Federalist 78, Madison in The Federalist 48, and Marshall in Marbury v. Madison. Even those who believe that the Court should exercise restraint want the Court to check the Congress when it patently and wantonly exceeds its constitutional power. Learned Hand's view on the matter is pertinent and interesting. He made it clear that he felt that the Court must have authority to annul statutes whether or not the Framers of the Constitution intended it that way. For, without this exercise of power, Hand contends "we should have to refer all disputes between the 'Departments' /branches/ and states to popular decision, patently an impractical means of relief, whatever Thomas Jefferson may have thought."[6] And the House of Delegates of the American Bar Association prefaced their resolution, which was critical of the Court, with these words: "Whereas the Supreme Court of the United States and an independent judiciary created by the Constitution have been and are the ultimate guardians of the Bill of Rights and the protectors of our freedom..."[7]

Analysis of the decisions of the Warren Court demonstrates conclusively that the Court has not prevented Congress from doing anything which it has the constitutional power to do. On the contrary, the real indictment of the Court should rest on the grounds that it has failed to hold

the power exercised by Congress within constitutional bounds. Nor is there to be found in the Warren Court's decisions any substance to substantiate the allegation that the Court has usurped Congress' law-making function.

The Court and Congressional Investigations

Because another panel will deal at length with Congressional investigations, I have been directed not to dwell on the subject. It seems to me imperative, however, in view of the subject matter of this paper to make a few points quickly in reference to the Court's treatment of Congressional investigations.

The Court's decision in the Watkins case antagonized many who felt that Congressional investigations into Communism had been fruitful. The American Bar Association's Special Committee on Communist Tactics, Strategy, and Objectives in its report of 1958 quoted with approval a statement made by Judge Robert Morris, former chief counsel of the Senate Internal Security Subcommittee to the effect that "The Power of the Congress to learn the underlying facts of the /Communist/ conspiracy has been hamstrung"[8] since the Watkins case. But more pertinent to our discussion is the fact that Watkins has been frequently cited as an instance in which the Court has put its nose in legislative business and for which it should have its nose tweaked.[9] What precisely did the Court do in Watkins? Despite the impressive dicta of of the Chief Justice who, in writing the opinion for a majority of eight, implied that the Court was prepared to hold Congressional investigations within Constitutional limits, we discovered as a consequence of the Barenblatt decision that a majority of five members had really decided the case on very narrow grounds. As Harlan pointed out in Barenblatt:

> "...A principle contention in Watkins was that the refusals to answer were justified because the requirement ... that the questions asked be 'pertinent to the question under inquiry' had not been satisfied. This Court reversed the convictions solely on that ground, holding that Watkins had not been adequately apprised of the subject matter of the Subcommittee's investigation or pertinancy thereto of the questions he refused to answer."[10]
>
> (emphasis supplied).

Although professing to see that there are constitutional limits to the power of Congress to investigate, the majority could not accept the dissenters' cogent arguments that the Subcommittee had exceeded them. In short, neither in Watkins nor any other case has a majority of the Court found an instance where a Congressional committee has exceeded constitutional limits. This in spite of the fact that the Constitution appears clearly to limit these inquiries sharply by the First Amendment and by the prohibition against bills of attainder. The majority wrote in respect to the First Amendment:

> Undeniably, the First Amendment in some circumstances protects an individual from being compelled to disclose his associational relationships. However, the protections of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist inquiry in all circumstances. Where First Amendment rights are

> asserted to bar governmental interrogation
> resolution of the issue always involves a balancing
> by the courts of the competing private and public
> interests at stake in the particular circumstances shown."[11]

If the First Amendment applies to the case as the majority accedes, where in the uneqivocal language of that Amendment lies discretion for a Court to weigh off competing private and public interests?

As to the charge that the Subcommittee was attempting to punish contrary to the prohibition against a bill of attainder, the majority wrote: "Nor can we accept the further contention that this investigation should not be deemed to have been in furtherance of a legislative purpose because the true objective of the Committee and of the Congress was purely 'exposure'. So long as Congress acts in pursuance of its constitutional power, the judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power."[12] It is clear then that a majority of the Court will not stop Congressional committees from using the investigatory power in order to punish, a power which it is denied by the Constitution. And it has been obvious for some time, as the dissenters indicate in an appendix, that this particular Committee has been bent upon punishing rather than investigating in the true sense of that word.[13]

Interestingly enough, Judge Learned Hand does not in any way use the Watkins case to support his thesis that the court has encroached on the legislative functions.[14]

Despite the vigorous dissent, shared by four members of the present court a majority has not curbed at any time in any meaningful way Congress' power to investigate. By the same token, in this area, it has not fulfilled its function of defending constitutional liberties against encroachment by the Congress.

Cases in which the Court Has Declared Statutes or Particular Application of Statutes Unconstitutional

At most, the Warren Court in six years has invoked its power to declare acts of Congress unconstitutional on only four occasions. In two of these, it could be argued that the Court did not actually do so. But this is to mistake essence for form. In any case, whether it be two or four times, quantitatively the number is small and hardly substantiates the thesis that the Warren Court is running roughshod over Congress. It is true that while Vinson served as Chief Justice over a comparable time span, the Court never exercised the power to declare an act of Congress unconstitutional. But is there anyone here who would protest the assertion that the Vinson Court was exceedingly permissive about allowing inroads to be made on the Bill of Rights?[16] It would be fairer, perhaps, to compare this Court to another which did in fact treat Congress cavalierly; in the much shorter period of 1934-1936, the Court overruled twelve acts of Congress.[17]

Quantitative analysis here is of limited value. It is more important to look at the cases themselves to see whether or not the Court had good constitutional reason to curb Congress or whether they were merely acting in arbitrary fashion.

In 1950, after much study and with good help from lawyers and the military, Congress enacted the widely-heralded Uniform Code of Military Justice into law. Attempting to plug what it deemed a lacuna in the old laws, the inability of trying ex-servicemen for crimes punishable under military law which had been committed while they were in service, Congress considered a proposal presented by the Judge Advocate General of the Army. He had urged Congress to "confer jurisdiction upon Federal courts to try any person for an offense denounced by the code if he is no longer subject thereto. This would be consistent with the Fifth Amendment of the Constitution. If you expressly confer jurisdiction on the Federal courts to try such cases, you preserve the constitutional separation of military and civil courts, you save the military from a lot of unmerited grief, and you provide for a clean, constitutional method for disposing of such cases."[18] Congress rejected this suggestion and enacted instead the following provision:

> "...any person charged with having committed, while in a status in which he was subject to this code, an offense against this code, punishable by confinement of five years or more and for which the person cannot be tried in ~~the courts of the United States or any State or Territory in~~ the courts of the United States or any State or Territory thereof or of the District of Columbia, shall not be relieved from amenability to trial by courts-martial by reason of the termination of said status."[19]

The first time (1955) the Supreme. Court decided a case involving this provision of the code, the Court declared it unconstitutional.[20]

In the Toth case, all the judges, majority and dissenters alike, agreed that, if Congress did have the power to turn ex-servicemen over to the military for trial by court-martial for crimes committed while in the service, Congress derived that power from the constitutional provision directing Congress "To make rules for the government and regulation of the land and naval forces" supplemented by the necessary and proper clause.[21] All the judges agreed that there was no question that under this provision persons in the armed services could be subjected to trial by court-martial for military offenses. All but two of the judges agreed that ex-servicemen were full-fledged civilians, and as such were entitled to the protections afforded by Article III and the Bill of Rights.[22] The majority maintained that, since Article III and the Bill of Rights were applicable, the constitutional grant of power to Congress had to be construed more strictly than would be the case in construing a constitutional power of Congress where no other Constitutional provisions ran counter to it. Determination of constitutionality for the majority, then, hinged on the question of whether or not it was essential to the making of "rules for the government and regulation of the land and naval forces" to try by court-martial ex-servicemen for crimes committed while in service. The majority thought not:

> "Court-martial jurisdiction sprang from the belief that within military ranks there is need for a prompt, ready-at-hand means of compelling obedience and order. But, Army discipline will not be improved by court-martialing rather than trying by jury some civilian ex-soldier who

> has been wholly separated from the service for months, years or perhaps decades. Consequently considerations of discipline provide no excuse for new expansion of court-martial jurisdiction at the expense of the normal and constitutionally preferable system of trial by jury."[23]

In view of the testimony of the Judge Advocate General of the Army, it would be difficult to conclude that the Court was arbitrarily curbing Congress rather than upholding the Constitution. It is worth noting that in this decision Justices Frankfurter and Harlan comprised part of the majority.

Within two years of the decision in Toth, another provision of the Uniform Code came cropper in the Supreme Court.[24] This second provision was one which required that "all persons serving with, employed by, or accompanying the armed forces without the continental limits of the United States" be subject to the Code.[25] When two service wives murdered their husbands, demonstrating to servicemen far better than the Commandant of the Marine Corps had on his ill-fated trip to Japan, that dependents abroad can be an unmixed blessing, they were tried and convicted by courts-martial. When the constitutional propriety of Congress' giving the military jurisdiction in cases of crimes committed by dependents overseas was questioned. the first time these cases came to the Supreme Court, a majority of the Court found Congress' action constitutional.[25] On its face such a decision seemed impossible to square with the decision in Toth. But Clark speaking for the majority saw as the difference the fact that the murdering wives, at the time of their court-martial, were citizens in a foreign country and that "Entirely aside from the power of Congress under Article III of the Constitution, it has been well-established since Chief Justice Marshall's opinion in American Insurance Co. v. Canter, that Congress may establish legislative courts outside the territorial limits of the United States proper. The procedure in such tribunals need not comply with the standards prescribed by the Constitution for Article III courts."[27] If Congress could set up legislative courts, he reasoned, they could constitutionally "employ the existing system of courts-martial for this purpose" as well.[28] Warren, Black and Douglas dissented indicating that due to the press of time in the closing days of the Term, they did not have time to write their views in dissent. Frankfurter reserved judgment writing that he did not have sufficient time to reflect on the issues involved for "Reflection is a slow process. Wisdom, like good wine, requires maturing."

Subsequently, the Court reheard the cases and decided that the previous decisions could not be permitted to stand, that the wives could not constitutionally be tried by courts-martial. This was not a capricious changing of minds. But since the Warren Court is frequently charged with irrationally reversing itself, it is worth a moment to see what actually did happen. Five judges held to their previous decisions, Clark and Burton now in dissent, Warren, Black and Douglas now in the majority. Frankfurter had completed his reflection on the issues and now concurred with the result reached by the new majority. Brennan, who had replaced Minton on the Court, joined in the majority opinion; Minton had been on the other side. Whittaker, the most recent addition to the Court as of that time, took no part in the decision; his predecessor, Reed, had joined in the majority in the first cases.

In short, Harlan was the only judge who had changed his mind. With refreshing candor, he stated that additional reflection on the issues had convinced him he had been wrong. Harlan made clear, however, that he changed his mind on the narrow ground "that where the offense is capital, Article 2(11) /the provision of the UCMJ in contention/ cannot constitutionally be applied to the trial of civilian dependents of members of the armed forces overseas in times of peace."[30]

For Black, the Chief Justice, Douglas and Brennan the wives were civilians, and even though they were at overseas posts they were entitled to the same constitutional protection they would have were they stationed at posts in the United States. Consequently, for them the reasoning of the Toth decision was both applicable and persuasive. They left open the the question of whether or not dependents could be made subject to the code in "an area where active hostilities were under way."[31]

In determining whether the Court had been arbitrary in its decision, these words of Justice Black on the case are well worth pondering:

> "These cases raise basic constitutional issues of the utmost concern. They call into question the role of the military under our system of government. They involve the power of Congress to expose civilians to trial by military tribunals, under military regulations and military procedures, for offenses against the United States thereby depriving them of trial in civilian courts, under civilian laws and procedures and with all the safeguards of the Bill of Rights. These cases are particularly significant because for the first time since the adoption of the Constitution wives of soldiers have been denied trial by jury in a court of law and forced to trial before courts-martial."[32]

By a 5-4 decision in 1958, the Court declared unconstitutional a statutory provision which stripped citizenship from any person convicted by a court-martial of desertion in wartime.[33] To fully understand the opinions in the Trop case, it is necessary to read them in conjunction with the opinions in Perez v. Brownell decided the same day.[34] There a 5-4 majority decided that a statutory provision calling for loss of citizenship for a person voting in a foreign election was constitutional. Three members of the majority in Trop, Warren, Black and Douglas maintained that Congress under no circumstances couldconstitutionally deprive a citizen of his citizenship. They had pointed out in Perez that the Constitution provides that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States".[35] They thought it noteworthy that, although the Constitution provides that citizenship may be granted under a "uniform rule of naturalization, there is no corresponding provision authorizing divestment".[36] This, they said, did not preclude naturalization from being set aside if unlawfully procurred.[37] But since the majority had rejected their basic contention in Perez, these three justices had to proceed in Trop on the assumption that there were times when Congress might be able to expatriate citizens. Even assuming that Congress did have such power, the three felt that expatriation as punishment was precluded by the Eighth Amendment's prohibition against

against cruel and unusual punishments.[38] Presumably, Whittaker who joined with the majority in Trop did so on the grounds of the Eighth Amendment for he specifically stated in a separate opinion in Perez that Congress could under some circumstances expatriate a citizen.[39] Brennan who had joined in the decision denying Perez citizenship took a great deal of pains in a separate opinion to explain that he was not being inconsistent by now voting to find the deprivation of citizenship in the Trop case unconstitutional. He maintained that the provision in Perez was relevant to Congress' power to regulate the conduct of foreign affairs.[40] In Trop, Brennan asserted there was no such relevance between expatriation for desertion and Congress' war power.[41] In short, the issue on which the majority seemed to jell in Trop is that expatriation is not a constitutionally-allowable punishment for desertion. The dissenters took issue with this view. They made it clear that they thought Congress could in the exercise of its war power expatriate wartime deserters. Unlike Brennan, they felt there was a "rational nexus between refusal to perform this ultimate duty of American citizenship and legislative withdrawal of citizenship."[42] Coming to grips with the majority position that expatriation was an unduly harsh punishment, Frankfurter in behalf of the dissenters pointed out that desertion was punishable by death and asked "Is constitutional dialectic so empty of reason that it can be seriously urged that loss of citizenship is a fate worse than death."[43] But this begs the question. Undoubteldy there are punishments short of death that civilized people regard as being cruel and unusual. One can be sure that Justice Frankfurter would regard mutilation or castration as a cruel and unusual punishment for even the most heinous crimes, though the victim survived. Perhaps, the majority did overdramatize the consequences of expatriation but were they far off base in finding that expatriation was "a form of punishment more primitive than torture" and that"an expatriate has lost the right to have rights"?[44]

In Bolling v. Sharpe, a companion case to the momentous Brown v. Topeka, the Court scrupulously avoided any indication that it was declaring acts of Congress unconstitutional.[46] Perhaps, it was not. But the fact remains that Congress as law-maker for the District of Columbia had in the past enacted laws which surely read as though they required segregation of the races in the District schools.[47] Because the equal protection clause only applies to the states, the Court obviously had difficulty basing the decision on specific constitutional grounds. Warren asserted for a unanimous Court that the due process clause prohibited segregation: "the 'equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due process of law', and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court recognized, discrimination may be so unjustifiable as to be violative of due process." Invoking the due process clause meant that the Court had to read new meaning into "liberty" in the Fifth Amendment. This the Court did: "Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clasuse." Surely, the real basis for the decision must have been the Court's conviction that "In view of our decision that the Constitution prohibits the states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government." If the Constitution did prevent segregation in

the schools of the states, it would indeed be a ludicrous result for the schools of the District to remain so.

Cases in which It Is Alleged that the Court Avoided Constitutional Questions but still Thwarted Congress' Exercise of Its Constitutional Powers

Critics charge that the Warren Court has frequently thwarted Congress' exercise of Constitutional powers even while it was professing to avoid the constitutional issues in the case. It is a kind of conspiracy theory. The argument goes that the Court, afraid to challenge Congress' power directly for all to see, prefers to do it surreptitiously when Congress exercises power in ways which the members of the Court personally disapprove. Some credence is lent to this theory by some of the Court's staunchest defenders. For example, our distinguished colleague, C. Herman Pritchett apparently believes that the Court has in critical cases avoided consideration of the question of Congress' constitutional powers for reasons of expediency rather than principle. He has argued that the Court has to be careful for political reasons about exercising the power to declare acts of Congress unconstitutional:

> "...The Court can be imprudent only at its peril. The power of judicial review is too important, and the Court's position intrinsically too weak, to permit the making of too many mistakes. Self-restraint counsels the Court to reach constitutional issues reluctantly and to be chary of disagreeing with legislatures or executives whether national or state."[49]

Previously, he had indicated the basis for this opinion:

> "The grave risks run by a Court which rejects the counsel of self-restraint were demonstrated in 1935 and 1936. That Court was willing to risk a test of its authority in defense of its interpretation of the Constitution, and in opposition to an enormously popular legislative and executive program. That effort to block the President and the Congress was a miscalculation which for a time jeopardized the entire institution of judicial review."[50]

Yet, Pritchett urges, the Court cannot stand by and watch Congress decimate the Bill of Rights. He added to the first of the two quotations above:

> "But self-restraint is not the ultimate in judicial wisdom. The Court's primary obligation is to bring all the judgment its members possess and the best wisdom that the times afford, to the interpretation of the basic rules propounded by the Constitution for the direction of a free society. The Supreme Court has a duty of self-restraint, but not to the point of denying the nation the guidance on basic democratic problems which its unique situation equips it to provide."

But, if I understood Pritchett correctly, in his superb lectures at the University of Minnesota earlier this year, the Court need not reach the

question of Congress' basic constitutional power in order to bring to bear its judgment on the basic issues of the day. He feels that the Court has consciously developed a technique for challenging the constitutional power of Congress by deciding cases on subsidiary issues which in effect challenge that power. He finds that technique commendable, for, although Congress may by simple legislation parry the thrust of the Court's decision, Congress must think through the issues again.

With all due respect, I find it hard to agree with Pritchett on several scores. First, there is no evidence that a majority of the Court has deliberately decided that they will avoid constitutional issues and yet restrain Congress in the cases used to make the point, Yates, the security program cases and the passport cases.[51] Although it is possible that several of the activist judges might have such ideas in mind, majorities in these cases included judges who, as a matter of principle, feel that the Court should be exceptionally deferential toward the Congress, notably Frankfurter. The decisions in these cases, taken in the context of all the decisions of the Warren Court, can better be explained as evidence of a majority's continuing deference to Congress. The clear implication of these cases is that a majority of the Court will not quarrel about the constitutional limits of Congressional power. Nor will the majority quarrel about how power is exercised, even where fundamental liberties are involved, as long as there is clear indication that it is being exercised in accord with Congress' expressed and specific intent.

Second, I cannot buy the idea that the Court avoided criticism by not deciding these cases on the issue of Congress' constitutional power. Would any more heat have been generated from certain quarters if in Yates the Court had declared the Smith Act unconstitutional?

Third, I cannot see, as Pritchett does, that these cases are great victories for libertarian principles. Although the precise cases may seem to be such victories, the Court has in fact established the bases for the making of colossal inroads into the safeguards of the Constitution. Remember that Jefferson had first thought that he had won a victory in Marbury v. Madison. To regard the decision in these cases as victories for libertarian values calls to mind the words "Yes but if we have such another victory, we are undone." I believe I can demonstrate my points by quick references to the specific cases.

First and foremost among these cases both for importance and attention received is Yates. It is hardly appropriate for me, here, to travel over the well-worn paths of discussion on the case. Suffice it to emphasize that only two judges, Black and Douglas, were willing to find the Smith Act unconstitutional. The four comprising the hard-core of the majority included, significantly, Frankfurter, Harlan and Burton, all of whom have been consistently deferential to Congress. They pointedly declined in an opinion written by Harlan to discuss the question of the constitutionality of the Smith Act: "We need not, however, decide the issue before us in terms of constitutional compulsion, for our first duty is to construe this statute." They clearly indicated by their decision, however, that the Smith Act is good law and if carefully applied by the Government along the lines suggested, they would uphold future convictions under the law.

They left the way open, too, for Congress to redefine parts of the law with every indication that any such redefinition would be constitutionally acceptable. In view of the nature of the statute and the danger it was contrived and has been applied to meet, the Court was certainly being deferential to Congress. Without taking an absolutist position that the First Amendment means what it says "Congress shall pass no law...", it is clear that, if it has any meaning, restrictions on free speech must be justified by the gravest kind of danger. As we must appreciate by now, the danger presented by American Communists was not and is not from their advocacy. Other laws were and are available to meet the real dangers of espionage, sabotage, and seditious conspiracy, if the talk of the Communists comes to that. The opinion of Black in which Douglas joined is a more persuasive interpretation of the real issues in Yates than the majority opinion:

> "In essence, petitioners were tried upon the charge that they believe in and want to foist upon this country a different and to us a despicable form of authoritarian government in which voices criticizing the existing order are summarily silenced. I fear that the present type of prosecutions are more in line with the philosophy of authoritarian government than with that expressed by our First Amendment."[52]

Such a decision as the majority decision in Yates is hardly a victory for libertarian values. For that decision fortifies the concept that Congress may constitutionally abridge free speech for less than the most pressing reasons.

It has been alleged that the Court thwarted Congress' exercise of constitutional power and jeopardized national security in cases involving several of the federal government's employee security programs,[53] notably in the Cole, Service and Greene cases. The Peters case, of course, did not directly involve an act of Congress. In the Cole case the statute involved was the one which empowered the heads of certain agencies to summarily dismiss their civilian employees, when they deemed it necessary "in the interest of national security."[54] Service had been dismissed by the State Department under the so-called McCarran Rider which Congress had passed giving the Secretary of State power "in his absolute discretion /to/ terminate the employment of any officer or employee of the Department..."[55] In Service, a unanimous Court (Clark took no part in the consideration or decision in the case) found no constitutional question involved. The decision to remand the case was based rather on the fact that the Secretary in this case had not followed the procedure prescribed by Departmental Regulations: "While it is of course true that under the Mc Carran Rider the Secretary was not obligated to impose upon himself these more rigorous substantive and procedural standards, neither was he prohibited from doing so, as we have already held, and having done so he could not, so long as the Regulations remain unchanged, proceed without regard to them." In Cole a majority of six, including Frankfurter and Harlan, without reaching any constitutional questions decided that a proper interpretation of the statute precluded summary dismissals from non-sensitive positions.

These decisions read in conjunction with Greene demonstrate that the Court was not challenging Congress' power. Rather they show that the Court was disturbed, as well it might be, about the way the various security programs were being administered. Even so, all the Court was asking in these decisions was a clear indication that Congress wanted the programs to be administered that way. As a near unanimous Court said in Greene, the case dealing with the issue of non-confrontation in the industrial security program,

> "Before we are asked to judge whether, in the context of security clearance cases, a person may be deprived of the right to follow his chosen profession without full hearings where accusers may be confronted, it must be clear that the President or Congress, within their constitutional powers specifically have decided that the imposed procedures are necessary and warranted and have authorized their use. Such decisions cannot be assumed by acquiesence or non-action. They must be made explicitly not only to assure that individuals are not deprived of cherished rights under procedures not actually authorized."[56]

Three judges, Frankfurter, Harlan and Whittaker took pains to note that they concurred in the judgment that neither Congress nor the President had authorized the procedures but added that they were "intimating no views as to the validity of those procedures." Nonetheless, the implication is clear that however distasteful non-confrontation may be to them, a majority will swallow it as lawful procedure, if the Congress specifically allows for it in legislation.

On the basis of libertarian values, the decisions in these cases leave much to be desired. Most libertarians would not quarrel with the argument that Congress has the constitutional power to set up security programs, nor would they argue against the need for them. What libertarians should and do insist upon is that procedures set up in such programs meet the constitutional requirement of due process. It is too late in the game to accept the proposition that working for the government is a privilege and not a right and that consequently the Fifth Amendment has no application. As Justice Clark conceded in Weiman v. Updegraff, "We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory."[57] Yet these decisions virtually invite Congress to establish procedures for administration of the security programs which inherently are so unfair as to violate due process.

The Court's decisions in the passport cases in 1958 brought it a full ration of criticism.[58] Again, it was charged in some quarters that the Court had placed the security of the Republic in jeopardy. The State Department was distressed enough by the decision to prevail upon the President to call for quick legislative action, presumably, to overcome the danger created by large numbers of suspect subversives traveling abroad. Although an old statute had provided that the Secretary of State could "grant and issue passports... under such rules as the President shall designate...", the decisions in these cases were no curb to Congressional power. The Court in 5-4 decisions found only that the Secretary of State had "no authority to

withhold passports to citizens because of their beliefs or associations" unless there was a more specific grant from Congress empowering him to do so.[59] Douglas, speaking for a majority which included Frankfurter, said: "Where activities or enjoyment, natural and often necessary to the well-being of an American citizen such as travel, are involved, we will construe narrowly all delegated powers that curtail or dilute them." Despite the important liberty involved, unquestionably, the President is correct in assuming that all that is necessary to win the Court's acquiescence to passport restrictions is for Congress to be more specific in a new law.

In Communist Party v. Subversive Activities Control Board,[60] the majority of the Court refused to pass on the constitutionality of the provisions of the Subversive Activities Control Act of 1950 requiring "Communist-action" organizations to register. As Judge Bazelon had pointed out in his dissent in the Court of Appeals there is a constitutional question in that the requirement of registration appears on its face to violate the Fifth Amendment's privilege against self-incrimination.[61] Instead the majority remanded the case to the Board " to make sure that the Board bases its findings upon untainted evidence." The Board had refused to reopen the hearing to receive evidence that three witnesses who had appeared against the Party in the original hearing had committed perjury. The Board felt it had ample evidence to support its findings apart from the testimony of the three whose testimony was questioned. It was refreshing to have the Court lecture all hands on the need for an "untainted administration of justice" for it is hard to believe that lawyers in the Department of Justice who had to work at length with Harvey Matusow did not recognize him for the psychopathic liar he evidently was. But the decision hardly reflects a disregard for the power of Congress. The implication here surely must be that if the Court does pass on the constitutionality of the Act itself, it will find it constitutional. For surely Justice Clark had made the same point in conference that he made in his dissent: "Ironically enough we are returning the case to a Board whose very existence is challenged on constitutional grounds. We are asking the Board to pass on the credibility of witnesses after we have refused to say whether it has the power to do so. The constitutional questions are fairly presented here for our decision. If all or any part of the Act is unconstitutional, it should be declared so on the record before us."

Cases in which the Court Has Clearly Affirmed Broad Constitutional Power for Congress

In making a general assessment of how the Court has dealt with Congress, it is obviously a mistake to limit the inquiry to cases dealing with civil liberties, communists, or any other small segment of cases, however important they may be. For it is only within the context of all the cases that we can get a valid picture.

The Court has been damned roundly by many, notably the Chief Justices of the States, for what they conceive as the Court's acquiescence to the aggrandizement of national power at the expense of the states. Another panel will deal with the topic " The Court and the States" at length which precludes extensive discussion of the subject now. But I believe it is important to the subject matter of my presentation to point out that in

the much-criticized decisions in the labor-relations field, the Court has affirmed that Congress has very broad constitutional power under the commerce clause. But here the Court has developed no novel theories, as the Conference of Chief Justices' Committee on Federal State Relationships conceded, even while taking a few gratuitous swipes at the Court:

> "In the days of Chief Justice Marshall the supremacy clause of the federal Constitution and a broad construction of the powers granted to the national government were fully developed, and as a part of this development the extent of national control over interstate commerce became firmly established. The trends established in those days have never ceased to operate and in comparatively recent years have operated at times in a startling manner in the extent to which interstate commerce has been held to be involved, as for example in the familiar case involving an elevator operator in a loft building." [62]

The Court has nowhere suggested that Congress cannot cede power in these fields, if it has a mind to. They have indeed, indicated to the contrary. It is worth recalling that this is precisely what Congress did do in respect to regulation of the insurance business when an earlier Court found that insurance was inter-state commerce and thus subject to regulation by Congress. Dean Lockhart, our distinguished Dean of the Law School at Minnesota summed up the matter so succinctly and so well that I should like to take the liberty of quoting him at length:

> "... We all know that for the past twenty years the Court has permitted Congress to make its own policy in expanding the national power, whether under the commerce clause or under the power to tax and spend for the 'general welfare' or other clauses. The Court has refrained from interfering as Congress has moved the national government into areas formerly the exclusive domain of the states.
>
> "The Chief Justices [of the states] deplore the rapid expansion of national powers, but they are criticizing the wrong agency or seeking the wrong remedy, Congress is the agency that has expanded the national powers, and the Court has practiced judicial restraint in leaving these policy determinations to Congress. If the Chief Justices want the Court to check this legislative expansion of federal powers, the Court must exercise less judicial restraint, not more.
>
> "In only one respect can it be fairly said that the Court has on its own authority expanded national powers. This is in its interpretation of vague statutory phrases, such as 'affecting commerce' in the National Labor Relations Act, where Congress sought to go as far as the Court would find constitutional power. Here the Court could possibly have adopted a more restricted view of national power without thwarting clearly expressed congressional intent. Yet Congress wanted the regulations to extend as far as was Constitionally proper, and there is no basis for concluding that the Court has carried national power in these areas beyond that contemplated or

> desired by Congress. Congress is still the basic policy-maker in determining the scope of national power, and has shown no inclination to draw back its regulations in these areas where it used vague phrases for the very purpose of going as far as possible."[63]

The Warren Court has affirmed Congressional power in other cases. The Court found in Nelson that Congress could and did pre-empt the field of anti-sedition legislation.[64] It upheld Congressional power against the President's power of removal.[65] Despite sharp dissents by Black and Douglas, the Court upheld Congress' power to dispose of tide-lands as Congress saw fit, quoting with approval an earlier Court decision holding that the power of Congress to dispose of any kind of property of the United States"is vested in Congress without limitation." [66] The Court reaffirmed Congress' power to regulate Indian affairs.[67] It also upheld what Corwin is wont to call Congress' "superpower", the power to do virtually whatever it wills to improve or protect navigation on navigable or not so navigable waters.[68] A unanimous Court agreed that Congress' power to legislate for the District of Columbia "includes all the legislative powers which a state may exercise over its affairs."[69]

The Warren Court has also upheld Congressional power in cases, at least some of which bear out my contention that the Warren Court has not been as protective of libertarian values as the "guardian"of the Constitution should be.

A majority of the Court found the First Amendment no bar to a federal obscenity statute.[70] While denying that it was dealing with the Constitutional questions, the Court for all practical purposes indicated that Congress could constitutionally prohibit corporations and labor unions from buying television time to promote candidates.[71] But, as the dissenters, Douglas, Warren and Black pointed out the First Amendment would seem to preclude such legislation. Nor did a majority worry about the impact on the First Amendment of a sweeping law requiring registration of lobbyists.[72]

Despite Black's biting dissent, in which he stated that punishment for criminal contempt by means of a summary proceeding has aptly been characterized by a State Supreme Court as, 'perhaps, nearest akin to despotic power existing under our form of government.'", the majority upheld an old act of Congress which they contended provided for summary punishment for contempts under some circumstances.[73] The Chief Justice and Douglas joined Black in dissent. Nor did a majority see that the Immunity Act of 1954 tread hard on the self-incrimination clause of the Fifth Amendment, although Douglas with Black concurring made an impressive argument that it did.[74] Nor could a majority see how the Gamblers' Occupational Tax Act violated the self-incrimination clause, even though it requires gamblers to indicate that they are violating the law.[75]

On the grounds that "the power of Congress over the admission of aliens and their right to remain is necessarily broad, touching as it does aspects of national sovereignty, more particularly our foreign relations and the national security", a majority, expressing regrets as they did so, permitted some unbelievable deprivations of the liberties of aliens. In Galvan v. Press, the majority found Galvan, an alien who had been a Communist from 1944 to 1946, deportable on the basis of a statute passed in 1950

which required deportation of any alien who at the time of entry to the United States, or any time thereafter, was a member of the Communist Party.[76] Incredibly, the majority found that this was not ex post facto even though conceding that "the intrinsic consequences of deportation are so close to punishment for crime, it might fairly be said also that the ex post facto Clause, even though applicable only to punitive legislation, should be applied to deportation." In another case where an alien was denied an application for suspension of a deportation order on the basis of confidential and undisclosed information, a majority opined that on the basis of Galvin,[77] "we must adopt the plain meaning of a statute, however severe the consequences." The majority went on to say that "suspension of deportation is not given to deportable aliens as a right, but by congressional direction, it is dispensed according to the unfettered discretion of the Attorney General." It is interesting to note that the Court took a different view of such unfettered discretion in the Greene case discussed earlier. In fairness, it must be added that in some cases, by statutory interpretation, the Court has mitigated the hard lot of aliens, only to be critized in some quarters for doing so. These cases will be discussed shortly.

Cases in which It Is Alleged That the Court Has Thwarted the Intent of Congress by Misconstruing Statutes

Obviously, a Court bent on doing so could for a time defeat the will of Congress by deliberately misinterpreting Congress' intentions as to legislation. There are some who feel that the Warren Court has done so. To the uninitiated, nothing could be much simpler than determining what Congress means in its statutes. Unfortunately, it is not always easy to divine the intent of Congress even in relatively simple legislation. As Professor Kamisar of the University of Minnesota Law School has pointed out to me, what could seem more clear than the word "statement" in the statute enacted by Congress as a response to the Jencks case. The Statute provides that: "In any criminal prosecution brought by the United States, no statement or report, in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendent) to an agent of the Government shall be the subject of subpena, discovery, or inspection until said witness has testified on direct examination in the trial of the case."

Yet, when the Court was confronted in Palermo v. U.S. with the question of whether or not a government agent's 600-word, typed summary of a three and one-half hour conference with a witness which included "brief statements of information" was a "statement" within the meaning of the statute, the Court found it no easy matter to construe the meaning of "statement."[78]

In recent years, Justice Frankfurter has been so intrigued with the difficulty of statutory interpretation that he has vied with himself to find prose adequate to describe it. Some problems, he said, "will lie in the penumbra of express statutory mandates."[79] In respect to the Taft-Hartley Act, he wrote: "The statutory implications concerning what has been taken from the States and what has been left to them are of a Delphic nature, to be translated into concreteness by the process of litigating elucidation."[90] Again, as if to warn the behavorists among us from attempting analysis:

"The judicial function is confined to applying what Congress has enacted after ascertaining what it is that Congress has enacted. But such ascertainment, that is, construing legislation, is nothing like a mechanical endeavor. It could not be accomplished by the subtlest of modern 'brain' machines. Because of the infirmities of language and the limited scope of science in legislative drafting, inevitably there enters into the construction of statutes the play of judicial judgment within the limits of the relevant legislative materials."[81] He even resorted to humor, "On more than one occasion, but evidently not frequently enough, Judge Learned Hand has warned against restricting the meaning of a statute to the meaning of its 'plain' words, 'There is no surer way to misread any document than to read it literally...' "[82] He added, "The notion that the plain meaning of the words of a statute defines the meaning of a statute reminds one of T. H. Huxley's gay observation that at times 'a theory survives long after its brains are knocked out.'" Despite this elucidation by Frankfurter, the notion persists that the Court takes liberties in statutory construction.

Examination of the cases decided by the Warren Court reveals that on the whole the Court has hewed pretty closely to the canons of construction developed by earlier courts with the acquiescence of Congress. For example, the Warren Court construes criminal statutes strictly but not so strictly as to defeat the obvious intent of legislation.[83] It attempts "to save and not to destroy"[84] a statute which it construes and to give "coherence to what Congress has done."[85] It gives a liberal construction to welfare legislation.[86]

Which cases then are relied upon for a showing that the Court disregards the intent of Congress? Yates is one that is frequently cited.[87] Recall that in the Yates decision the Court so construed the word "organize" as to mean "acts entering into the creation of a new organization." Since the latest "organizing" of the Communist Party of the United States within the meaning given by the Court occurred in 1945, the statute of limitations precluded convicting anyone for "organizing" in recent years. Significently, Representative Smith from whom the Smith Act gets its name, has argued that Congress had not intended that meaning for "organize", that those who supported the passage of the bill regarded organizing as a continuing activity. But all his efforts to get Congress to amend the law and provide for his definition have failed.

The Chief Justices of the states reported that they found the Court's decision in Textile Union v. Lincoln Mills[88] "somewhat disturbing."

> "That case concerns the interpretation of Section 301 of the Labor Management Relations Act of 1947. Paragraph (a) of that Section provides: 'Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties.' ... Section 301 (a) was held to be more than jurisdictional and was held to authorize federal courts to fashion a body of law for the enforcement of these collective bargaining agreements and to include within that body of federal law

> specific performance of promises to arbitrate grievances under collective bargaining agreements."[89]

Professor Meltzer, who was one of the team of University of Chicago Law School professors who prepared studies for the Committee of Supreme Court Judges, studies which ironically, do not bear out the contentions of the Committee, did a comprehensive analysis of the labor relations cases. He makes the point that "Although.../ Section 301 (a)/ appears to be only a grant of jurisdiction, it should be noted that the standards for vicarious responsibility embodied in Section 301 (b) constituted substantive regulation;..."[90] In short, one cannot categorically claim that the Court was wrong in its interpretation. Meltzer's conclusions respecting the Court, Congress and state jurisdiction over labor relations are discerning and relevant here:

> In a period bristling with primitive denunciation of the Supreme Court it is appropriate to say again that these problems have not been created by the Court. They result in part from the complexities of a federal system, which are magnified in a'field' such as labor relations, which intersects with so many activities and implicates such diverse forms of regulation. They result also from the default of Congress with respect to fundamental issues whose solution determines how and by whom a modern economy should be governed and, indeed, in some situations whether it is to be governed at all."[91]

It is to be regretted that the state Supreme Court judges had so little time to consider the studies executed in their behalf by members of the University of Chicago Law Faculty before they issued their own report.[92]

The Court has also been criticized for its intepretation of various provisions of law pertaining to Communist aliens. The Bonetti and Witkovich cases are cited as prime examples, Although Rowaldt could have been included too.[93] In Bonetti the provision interpreted was the one requiring the Attorney General to deport all aliens who were Communist Party members "at the time of entering the United States,.../or/ at any time thereafter."[94] Bonetti had confused the issue by coming to the United States first in 1923, by becoming a Communist Party member between 1932-1936, by leaving the country and then coming back in 1938. The majority decided that his entry date was 1938 and not 1923. Consequently, he was not a Communist Party member during or after this entry date. Was this unreasonable statutory interpretation?

A provision of the Immigration and Nationality Act of 1952 required that any "alien against whom a final order of deportation ... has been outstanding for more than six months, shall ... give information under oath as to his nationality, circumstances, habits, associations, and activities and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper."[95] Despite this broad grant of power to the Attorney General, the Court upheld Witkovich's contention that the Attorney General could only ask him those questions which would enable the government to ascertain that he, Witkovich, was

holding himself ready for deportation, and could not ask him questions about his associations and activities.

The Internal Security Act of 1950 contained a provision making aliens who were Communist Party members deportable. Later, Congress realized that this provision as it stood was too broad, for some people in other lands had joined the Party innocently. Consequently, in 1951 Congress amended the provision by defining "membership" to mean "only membership or affiliation which is or was voluntary, and shall not include membership or affiliation which is or was solely (a) when under sixteen years of age, (b) by operation of law, or (c) for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes."[96] In the Rowoldt case, a majority of the Court found that Rowoldt had only been a lukewarm Communist for approximately one year and felt that he was precluded from deportation under the revised definition of membership if not specifically, at least by the spirit of it.

Just recently, the Court quoted with approval the words of an earlier Court to the effect that "When the questions are of statutory construction, not of constitutional import, Congress can rectify our mistake, if such it was, or change its policy at any time, and in these circumstances reversal is not readily to be made."[97] The fact that Congress has refrained from "rectifying" any of these alleged "mistakes" must be regarded as significant.

The Warren Court as Policy-Maker

As a reaction to the earlier days when it was being asserted by Court and commentators that the Court merely decided cases, it has become popular to play up the fact that the Court does make policy. For example, a majority of the Warren Court speaking through Justice Frankfurter blandly conceded, as perhaps no other Supreme Court before it would have, that courts make law: " The claims of dominant opinion rooted in sentiments of justice and public morality are among the most powerful shaping-forces in lawmaking by courts. Legislation and adjudication are interacting influences in the development of law."[98] Robert A. Leflar, now Professor of Law at the University of Arkansas and former Associate Justice of the Supreme Court of Arkansas, said recently, "One thing stands out above all else from this - our courts have made most of our law, the mass of our common law. Courts do make law. It is their business to make law. At least that is true of appellate courts."[99] Indeed, it is true that the Supreme Court makes law and with it national public policy. But some of the claims and allegations about the extent and manner of law and policy-making by the Court are extravagant beyond reason. Take for example these words of Professor Bernard Schwartz:

> "A high court which, in effect, reverts to the position of originating lawmaker is bound to encounter popular opposition. This is expecially true when the tribunal is composed of men who give all too frequent evidence of being unversed in the intracies of our public law and procedure. Such men will inevitably be deficient even in adequately explaining the bases of their actions. Their opinions will tend to be homilies in political

> science. Their language will be turgid and verbose; their reasoning prolix and obscure. All too often, they will ignore the distinction between obiter and ratio and the appropriate weight to be given to different types of legal and non-legal authority."[100]

The implication of such criticism is that the Court has set itself up as a super-legislature, deciding on its own initiative what the laws and policies of the nation should be. But the fact remains the Court exercises no such wide-ranging power. Whatever it does in respect to law and policy-making it does so in consequence of deciding specific cases. As Dean Rostow put it: "The Court's function is recognizably different from that of the legislature or of the executive, even when it must weigh the same considerations in the scales. The forum is different. The time is different, so that the pressure of contending interests appears in a different perspective."[101] It is true that in deciding cases, the Court will effectively make law and policy, but it does so only within the context of the Constitution, and legislative enactments except where there is no constitutional or statutory law involved.

The decisions of the Warren Court will not bear out any contention that the Court has arrogated unto itself legislative power. Whatever law and policy it has made has been in consequence of deciding cases within the context of the Constitution, statutes, and traditional common law principles. Decisions which are relied upon to demonstrate the Warren Court's proclivity for usurpation of legislative powers are for the most part decisions made in cases which involved the meaning of the Constitution. If the Court has the function, which we as a people seem to agree that it has,, of upholding the Constitution, it had no alternative in those cases but to arrive at the decisions it did.

It is alleged that the Court usurped legislative powers in the school cases involving segregation. If the Constitution has meaning, how else could the Court have decided the Brown case?[102] To argue that schools can be separate and equal in this day and age makes about as much sense as arguing that Apartheid is not designed to discriminate against the Negro. It might be well to give pause to the thought that it was an earlier Court overruling what seemed to be the express intent of Congress which established the legal basis for racial discrimination.[103] Subsequent decisions as to enforcement of the Brown decision follow from that decision. In that connection, there is no indication in the Court's opinions that it would be aggrieved by legislative and executive action on both national and state levels to establish policy in this area that met with constitutional requirements.

The state Supreme Court justices indicated that they felt that the Supreme Court "too often has tended to adopt the role of policy-maker without proper judicial restraint" in "supervision of state action ...by virtue of the Fourteenth Amendment."[104] But, as you can see, these justices themselves point out why the Court was compelled to do so. The Fourteenth Amendment. I do not want to poach on the subject matter of another panel, consequently, I shall confine myself to the observation that a review of the cases cited by the state Chief Justices indicates that there was in virtually

all of them sound reason for the Court to measure state action against the requirements of the Fourteenth Amendment.

There is still another category of cases where it is alleged that the Court has gone too far in making policy, those cases involving labor relations and regulation of monopolies. But as was pointed out earlier in respect to the labor-relations cases, (the same is true of anti-trust cases), the Court felt that Congress had "delegated" power to them to make policy in the field. Nor has Congress chosen to indicate that the Court has misinterpreted their congressional intent. There can be no question that Congress has discovered the political efficacy of allowing the Court to spell out policy in controversial fields. The Court has performed the task perhaps not happily nor well. In any case, the Court did not "usurp" the function of policy-making from Congress.

The Court has traditionally exercised wide policy-making powers in respect to supervising administration of criminal justice in the federal courts.[105] The Warren Court in a 5-4 decision, has asserted recently that 106" the Court also has "supervisory powers over federal law enforcement officials As the dissenters pointed out this is the first time that such power per se has been claimed the Court. Nonetheless, the Warren Court has made it clear that even in these areas it will adhere to the expressed wishes of Congress, unless, of course, these wishes run counter to provisions of the Constitution.

The Meaning of What Congress Has Done and Not Done Regarding the Court

If, as alleged, the Court has been trespassing upon the domain of Congress, surely, the Congress should be very much aggrieved. Significantly, the Congress has chosen to do virually nothing about the alleged trespasses. Right after the Jencks case, perhaps, moved by Clark's bitter dissent charging that "Unless Congress changes the rule announced by the Court today, those intelligence agencies of our Government engaged in law enforcement may as well close up shop, for the Court ha s opened their files to the criminal and thus afforded him a Roman holiday for rummaging through confidential information as well as vital national secrets"[107] and the ensuing publicity given the former Attorney General's words, the Congress did study the Jencks decision. The result - virtual reaffirmation of the Court decision in legislation.[108]

Entreated from within and without, the Congress has over the past few years considered a whole host of proposals aimed at the Court. A year ago, Senator Jenner implored the Congress "to protect itself and the country against the usurpations of this runaway wild court, which is tearing down the Constitution of the United States."[109] Yet Congress has chosen to do nothing. True, some measures did pass the House but these were not measures which would have changed the composition of the Court or diminished its powers.[110] They were measures which would have reconstrued statutes which a majority of the House felt the Court had misconstrued. But all of these failed to pass or be considered by the Senate. More important, on the issues where the Court has been charged with policy-making, segregation and labor-relations, the Congress did nothing to demonstrate discontent with what the Court had done.

Conclusions

Although a minority of the judges would prefer to have it otherwise, the Warren Court as an institution has been exceptionally deferential to Congress. So much so, that for one with libertarian values it has been too permissive, permitting the Congress to make grave invasions of fundamental liberties. In view of this, it is strange, indeed, that the Court has been attacked for treading on the power of Congress. How can it be explained? Several explanations come to mind. First, a good part of the criticism stems from people who are unhappy about particular decisions, like the segregation decisions. In their fury, they are willing to use any and all arguments against the Court in the hope that somehow the decision can be reversed. In addition, there is some element of the strategy used by umpire "baiters" in baseball. To paraphrase a one-time baseball manager who was a notorious umpire baiter "you don't change the umpire's mind about the decision just made, but you can sure worry him about the next one." The strategy makes sense, for as we all know, the Court is very sensitive to opinion. As Frankfurter put it: "The claims of dominant opinion rooted in sentiments of justice and public morality are among the most powerful shaping-forces in law-making by courts." There is ample evidence that the Court will not long swim against the current of prevailing opinion.[111] If proponents of certain views can create the impression that they are in fact the dominant opinion they may well force the Court to modify its views, however right the Court may have been.

Second, any assessment of how the Warren Court has performed depends in large part on how one reads the Bill of Rights and other provisions of the Constitution safeguarding individual liberty. If these provisions have real meaning, then, a Court in our system must uphold them against encroachment even by Congress. Sadly enough, over the past few years there has been a general failure among Americans to appreciate the tremendous importance of our fundamental liberties. As incredible as it seems, men trained in the law, the Special Committee on Communism, Tactics, Strategy and Objectives of the American Bar Association offered the following resolution for the approval of the Associations House of Delegates.

> "Be it further resolved that whenever there are reasonable grounds to believe that as a result of court decisions internal security is weakened, or wherever technicalities are invoked against the protection of our nation, remedial legislation be enacted by the Congress..." (emphasis supplied)[112]

Technicalities, indeed! It is the Bill of Rights they refer to. The reference to "technicalities" was finally deleted, but only after spirited debate. In the course of the debate, an eminent past president of the Association, Loyd Wright, asserted that "American people pay too much attention to their liberties and not enough to their responsibilities."

Third, some of the criticism of the Court comes from those who feel that as a matter of democratic principle, the Court should very reluctantly exercise the power to declare acts of Congress unconstitutional. They generally do not advocate that the Court be deprived of the power completely. They prefer that the Court exercise self-restraint. Oddly enough, the majority of the Court itself is presently committed to this view. But,

evidently, they have not exercised enough restraint to satisfy some critics.

In view of the Court's failure to check the excesses of Congress, why has the Court escaped criticism from libertarian quarters? To some extent the answer must lie in the fact that we have just weathered a period in our history which government has not been scrupulous about observing the rights of citizens. Consequently, any victory at all has loomed large in the thinking of libertarians. The defeats have been accepted philosophically as manifestions of the times. Also, they have felt it so important to defend the Court for the few important victories achieved, notably the segregation decisions, that they have been chary about criticizing the Court lest such criticism help dissipate the few victories.

Second, many who hold libertarian values also have a deep commitment to the concept of majority rule. For them, there has been real appeal in the arguments for judicial self-restraint. They have failed to appreciate that judicial self-restraint does not have the same impact that prohibiting the Court to exercise the power to declare an act of Congress unconstitutional would have. For the public at large, the failure of the Court to exercise its power, even as a matter of principle, is regarded as approval of what Congress has done and gives to the action an added and impressive endorsement. Jackson made the point well in his separate opinion in Korematsu:

> "A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image."[113]

It is far better for the Court to be stripped of the power for all to know rather than to maintain an illusion, in a doctrine of self-restraint, that the Court can be counted upon in a real pinch to serve as a bulwark against congressional invasions of liberty. In short, if the citizenry are to be the "safest depository of their own rights", it should be made clear to them that they can only depend upon themselves.[114]

But the time has come for those with libertarian values to point up the failure of the Court to defend constitutional liberties from invasions by the Congress. Certainly, it would never do to allow the Court to believe that the "dominant opinion" of the nation approves emasculation of constitutional liberties.

FOOTNOTES

1. 12 Congressional Quarterly Almanac 416 (1956)
2. New York Times, March 16, 1958, IV, 10
3. Learned Hand, The Bill of Rights, p. 66
4. Committee on Federal-State Relations as Affected by Judicial Decisions, Conference of Chief Justices, Report, p. 7.
5. Ibid, p. 31.
6. Hand, op. cit. p. 66.
7. New York Times, February 25, 1959, p. 25.
8. 104 Congressional Record 19134-5
9. Corwin's Letter to the Editor, supra note 2.
10. 79 S.Ct. 1081, 1087-8 (1959)
11. Ibid, 1093
12. Ibid., 1096
13. Ibid.,1112
14. Hand, op. cit.
15. For a fine statement advocating judicial self-restraint in cases involving Congressional investigations, see Robert K. Carr, The House Committee on Un-American Activities, 446-448.
16. See C. Herman Pritchett, Civil Liberties and the Vinson Court, especially p. 238.
17. Edward S. Corwin (ed.), The Constitution of the United States, Annotated. 1252-1254
18. 350 U.S. 11, 21 (1955)
19. Ibid, 13
20. Ibid
21. Ibid, 14 and 31
22. Minton, whom Burton joined indissent, wrote: "My trouble isthat I don't think Toth was a full-fledged civilian. Ibid., 20
23. Ibid., 22
24. Reid v. Covert, 354 U.S. 1 (1957)
25. Ibid, 4
26. Kinsella v. Krueger, 351 U.S. 470 (1956) and Reid v. Covert, 351 U.S. 487 (1956)
27. 351 U.S. 470, 475 (1956)
28. Ibid, 476 and 480 (1956)
29. 354 U.S. 1, 65 (1957)
30. Ibid
31. Ibid, 33
32. Ibid., 3
33. Trop v. Dulles, 356 U.S. 86 (1958)
34. 356 U.S. 44 (1958)
35. Ibid, 65
36. Ibid 66
37. Ibid
38. 356 U.S. 86, 101 (1958)
39. 356 U.S. 44, 84 (1958)
40. 356 U.S. 86, 105 (1958)
41. Ibid 107
42. Ibid 122
43. Ibid 125
44. Ibid 101
45. 347 U.S. 497 (1954)
46. I am indebted to Professor John J. Cound of the University of Minnesota Law School for suggesting that Bolling v. Sharpe be included as a case in which the Court found a Congressional enactment unconstitutional. Despite the Court's evasiveness, it obviously is such a case.
47. For a review of Congressional action, see Carr v. Corning, 182 F.2d. 14 (1950)
48. 347 U.S. 497

Footnotes--

49. C. Herman Pritchett, The American Constitution, p. 154
50. _____, "TheSupreme Court Today", 3 South Dakota Law Review 91958), p. 63
51. As I recall, Pritchett used the Watkins case to make his point. That was before the decision in Barenblatt.
52. 354 U.S. 298, 343
53. See the Report of the Special Committee on Communist Tactics, Strategy, and Objectives, American Bar Association, published in 104 Congressional Record, 19132
54. 351 U.S. 536 (1956)
55. 354 U.S. 363 (1957)
56. 79 S. Ct. 1400. 1419 (1959)
57. 344 U.S. 183, 192 (1952). See also Ralph Brown, Loyalty and Security, pp. 333-5.
58. Supra note 53.
59. Kent v. Dulles, 357 U.S. 116 (1958) and Dayton v. Dulles, 357 U.S. 144 (1958)
60. 351 U.S. 115 (1956)
61. Ibid, 122 and note 4
62. Committee on Federal-State Relations, op. cit. p. 8.
63. William Lockhart, "Comment: A Response to the Conference of State Chief Justics", 107 University of Pennsylvania Law Review, p. 803 (1959)
64. Pennsylvania v. Nelson, 350 U.S. 497 (1956)
65. Wiener v. U.S., 357 U.S. 349 (1958)
66. Alabama v. Texas, 347 U.S. 272 (1954)
67. Williams v. Lee, 79 S. Ct. 269 (1959)
68. U.S. v. Twin City Power Co., 350 U.S. 222 (1956)
69. Berman v. Parker, 348 U.S. 26 (1954)
70. Roth v. U.S., 354 U.S. 476 (1957)
71. U.S. v. International Union, etc., 352 U.S. 567 (1957)
72. U.S. v. Harriss, 347 U.S. 612 (1954)
73. Green v. U.S., 356 U.S. 165 (1958)
74. Ullmann v/ U.S., 350 U.S. 422 (1956)
75. Lewis v. U.S., 348 U.S. 419 (1955)
76. 347 U.S. 522 (1954)
77. Jay v. Boyd, 351 U.S. 345 (1956)
78. 79 U.S. 1217 (1959)
79. Textile Workers Union v. Lincoln Mills,. 53 U.S. 448, 457 (1957)
80. International Association of Machinists v. Gonzales, 356 U.S. 617, 619 (1958)
81. Local 1976, etc. v. NLRB, 357 U.S. 93, 100 (1958)
82. Massachusetts Bonding & Insurance Co. v. U.S., 352 U.S. 128, 138 (1956)
83. Arroyo v. U.S., 79 S.Ct. 864 (1959); Rainwater v. U.S., 356 U.S. 590 (1958); U.S. v. Turley, 352 U.S. 408 (1957); U.S. v. Bramblett, 348 U.S. 503 (1955)
84. U.S. v. Menasche, 348 U.S. 528 (1955)
85. Achilli v. U.S., 353 U.S. 374 (1957)
86. U.S. v. Scovil, 348 U.S. 218 (1955)
87. Yates v. U.S., 354 U.S. 298 (1957)
88. 353 U.S. 448 (1957)
89. Committee on Federal-State Relations, op. cit. p. 10.
90. Bernard D. Meltzer, "The Supreme Court, the Congress and State Jurisdiction over Labor Relations", University of Chicago Law School Record Special Supplement, Autumn, 1958, p. 95.
91. Ibid, p. 124
92. Evidently, the Chicago professors were afflicted with the malady so common to the profession, failure to meet deadline. Unfortunately, this prevented the judges from making full and good use of the excellent studies. For a blow by blow account of the effort of the judges to get the study materials, see Committee on Federal-State Relations, op. cit., Forward.

Footnotes--

93. Supra Note 53
94. Bonetti v. Rogers, 356 U.S. 691 (1958)
95. U.S. v. Witkovich, 353 U.S. 194 (1957)
96. Rowoldt v. Perfetto, 355 U.S. 115 (1957)
97. Patterson v. U.S., 79 S. Ct. 936, 937 (1959) See report on Doughs speech, N.Y.T. Nov. 9, 1958 p. 1
98. National City Bank of N.Y. v. Republic of China, 348 U.S. 356, 360 (1955)
99. Robert A. Leflar, "The Task of the Appellate Court", 33 Notre Dame Lawyer p. 562 (1958)
100. Bernard Schwartz, 57 Michigan Law Review p. 348 (1959)
101. Eugene v. Rostow, "The Supreme Court and the People's Will", 33 Notre Dame Lawyer, p. 585 (1958)
102. Brown v. Board of Education, 349 U.S. 294 (1955)
103. Civil Rights Cases, 109 U.S. 3 (1883)
104. Committee on Federal-State Relations, op. cit. p. 27.
105. Palermo v. U.S., 79 S. Ct. 1217 (1959); Mallory v. U.S., 354 U.S. 449, (1957)
106. Rea v. U.S., 350 U.S. 214 (1956)
107. Jencks v. U.S., 353 U.S. 657 (1957)
108. 71 Stat. 595 (1957)
109. New York Times, August 21, 1958, p. 1.
110. New York Times, August 22, 1958, p. 1. Cellar, "The Supreme Court etc."; Reporter Nov. 27, 1958, p. 31
111. Wallace Mendelson, "Mr. Justice Frankfurter - Law and Choice", 10 Vanderbilt Law Review 333, 341 (1957)
112. New York Times, February 25, 1959, p. 1. See "Excerpts from ACLU Analysis etc." N.Y.T., April 19, 1959, p. 82
113. Korematsu v. U.S., 323 U.S. 214, 242 (1945)
114. For an excellent treatment of the doctrine of judicial self-restraint, see Mendelson, op. cit.

THREE CONSTITUTIONAL COURTS: A COMPARISON

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I

Two years ago, when an astute critic made a half-century appraisal of comparative politics in the United States, he reminded us that the American Political Science Association was founded in 1903 as an outgrowth of moves to establish a National Conference on Comparative Legislation.[1] During the more than half century that followed, the writings in comparative government and politics have reflected the influences which have made themselves felt in the discipline as a whole. After World War I, Charles E. Merriam's concern for "informal government," "underlying processes and relations," and "social bases of political cohesion," which found wide acceptance then, is fully appreciated now by those who are projecting comparative studies of political socialization.[2] In the 1930's, Carl J. Friedrich's writings pointed up the need for more adequate conceptualization when combined with appropriate appreciation of empirical research.[3] Mention should also be made of the

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[1] Sigmund Neumann, "Comparative Politics: A Half-Century Appraisal," Journal of Politics, Vol. 19, pp. 369-90 (1957).

[2] Note particularly his Making of Citizens (Chicago, 1931), with the subtitle, "A Comparative Study of Methods of Civic Training," in which Merriam sought to summarize and provide a central interpretation for eight country studies in a series which dealt with civic training.

[3] See the introductory chapter of his Constitutional Government and Politics (Boston, 1937), subsequently published in revisions under the title of Constitutional Government and Democracy.

earlier work of Herman Finer.[4] In their respective ways, albeit in varying degrees, all of these writers recognized the need for greater integration in the social sciences, for an increased emphasis upon the informal and extra-legal factors affecting the political process, and for more concern with generalization and theory.

Prior to World War II, there had been a growing belief in some quarters that much of the work in comparative government was a mere parochial accumulation of facts about Western institutions.[5] The needs experienced during the War called for far more systematic classification and interpretation of existing data, as well as for the use of new sources of information. Developments of the post-war period--the cold war, the anti-colonial movements, and the growth of nationalism in various parts of the globe--helped place a premium on policy-oriented research.

In this setting, and cognizant of the efforts in the social science disciplines to seek for a greater comparability of research findings, the Committee on Comparative Politics of the Social Science Research Council was established in 1954. On the basis of some common orientation and with a bias for functional analysis, this committee has encouraged a large number of studies focused on political groups in Western and non-Western countries.[6] These

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[4] Esp., Theory and Practice of Modern Government (2 vols., London, 1932).

[5] E.g., Roy C. Macridis, The Study of Comparative Government (New York, 1955).

[6] Over 100 articles, formal, and informal papers have resulted from the work of the Committee. For an explanation of its evolving rationale, see Gabriel A. Almond, "A Comparative Study of Interest Groups and the Political Process," American Political

efforts are necessarily experimental. They have provoked some questions as to whether the interest group approach will lead to better understanding of political institutions and behaviors than would other approaches.[7] Notwithstanding, this "pioneering" represents one of the most promising and provocative group research efforts in comparative politics today.

Work in comparative administration has also developed rapidly since World War II under the auspices of governments, universities, and professional societies. Moreover, serious attempts are being made to move beyond the "action research" which has held the center of the stage in the past.[8] New American journals have appeared, such as the American Journal of Comparative Law, and Comparative Studies in Society and History. Both foreign and domestic institutes and centers are directing greater attention to research in comparative politics. This is also true of the international associations, including the International Political Science Associ-

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Science Review, Vol. 52, pp. 270-82 (1958), and Lucian W. Pye, "Political Modernization and Research on the Political Socialization Process" (mimeographed mss., July, 1959). The major collective and interpretive effort to date of this Committee is the forthcoming volume, The Politics of the Underdeveloped Areas, which deals with the characteristics and classification of the political systems and the process of political development in the new countries of Africa, South America, South Asia, and the Middle East, by Professors Gabriel A. Almond, James S. Coleman, Lucian W. Pye, George O. Blanksten, Dankwart A. Rustow, and Myron Wiener.

[7]Joseph LaPalombara, "The Utility and Limitations of Interest Group Theory in Non-American Field Situations" (mimeographed mss. of paper to appear in a forthcoming issue of the Journal of Politics), p. 6.

[8]Note the current program of the American Society for Public Administration. On the literature, see, for example, Robert V. Presthus, "Behavior and Bureaucracy in Many Cultures," Public Administration Review, Vol. 19, pp. 25-35 (1959).

ation. The Study of Comparative Government and Politics, edited by Gunnar Heckscher,[9] and Interest Groups on Four Continents, edited by Henry W. Ehrmann,[10] embody some of the reflections of foreign and American political scientists on the scope, methodology, objectives, and trends in comparative politics.

As Charles S. Hyneman recently reminded us in his The Study of Politics,[11] we can consequently take comfort in the fact that there are many paths for the laborer to follow in the vineyard. Each of us will doubtless be guided in that direction to which his interest, training, and experience point.

This evening, we have set for ourselves a modest assignment in an area which has received too little attention and which is deserving of more study in the future. That will be to examine, comparatively, the Constitutional Courts of three Western European countries--those of West Germany, Italy, and Austria. We shall discuss the reasons for their creation, some of their most significant decisions, and the general position which they occupy in their own political systems. In connection with our topic, we wish to recognize the participation in this meeting of our Association of the distinguished justices from foreign countries.

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[9] (London, 1957).

[10] (Pittsburgh, 1958).

[11] (Urbana, 1959).

II

Constitutional Courts have been established in the three countries in accordance with the provisions of their respective Constitutions, as implemented by the necessary legislation. These Constitutions were the Austrian one of 1920 (as amended in 1925 and 1929) which was reinstituted during the uncertain post-war period in 1945, the Italian Constitution of 1948, and the West German Basic Law of 1949. Though the Austrian Constitution presents a special case, all three may be classed as of post-World War II vintage. The Constitutions of West Germany and Italy were the product of negative revolutions, reflecting a deep distaste for the "dismal past." As characterized by our Chairman of this evening, "the political theory of the new Constitutions which are democratic in the traditional Western sense...revolves...around four major focal points which distinguish them from their predecessors: 1) reaffirmation of human rights, but (2) efforts to restrict these rights in such a way as to make them unavailable to the enemies of constitutional democracy, (3) stress upon social goals and their implementation through socialization, but (4) efforts to circumscribe the goals and their implementation in such a way as to prevent the reemergence of totalitarian methods and dictatorship."[12] To achieve these goals, the specially provided Constitutional Courts were to play an important part.

In seeking the explanations for the adoption of these special Courts, we are reminded that judicial review in continental Europe,

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12 C. J. Friedrich, "The Political Theory of the New Democratic Constitutions," Review of Politics, Vol. 12, pp. 217-18 (1950).

as in the United States, had its roots in the higher law background and conceptions of ancient and medieval times. The precedents for special courts to protect the fundamentality of the Constitution can be traced at least as far back as the end of the 18th century, when written constitutions came into being,[13] with the proposals of Abbé Sieyès in the 1790's for the creation of a constitutional jury. The work of a succession of distinguished advocates of judicial review, who refused to accept some of the implications and influences stemming from the French Revolution, followed at later periods.

That this heritage and this special advocacy were alone inadequate to account for the later creation of Constitutional Courts is evident from a glance at the history of Western Europe. It was not until postmortems on World War I that the Austrian Constitutional Court came into being. And there were particular considerations after World War II which gave an impetus to the establishment of special courts in West Germany and Italy.

The most obvious influence was that of national precedent. In the case of West Germany, there were precedents which could be traced to the constitutional proposals of the National Assembly of 1848, and later to the history of the National Supreme Court (Reichsgericht), and of the High Court (Staatsgerichtshof) of the Weimar period. The High Court had jurisdiction over the settlement of disputes between states (Länder) and between states and

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[13] David Deener, "Judicial Review in Modern Constitutional Systems," American Political Science Review, Vol. 46, pp. 1079-83 (1952).

the Reich, as well as over impeachment cases. The Supreme Court passed upon the compatibility of state laws with federal laws, and it reviewed the constitutional validity not only of state, but also in several instances of federal legislation. But there were various limitations which operated to restrict the scope and effectiveness of the activities of these Courts. In the case of Austria, traces of the Austrian Constitutional Court can be found in constitutional developments of the period between 1848-1851, and especially in the establishment in 1867 of the Court of the Empire (Reichsgericht). As time went on, this Court exercised jurisdiction over the claims of the provinces (Länder) against the Empire and vice versa; it dealt with conflicts of competences between judicial and administrative authorities at both the provincial and national level, and with complaints of citizens for the violation of constitutionally guaranteed political rights after other remedies had been exhausted. As for Italy, though there were certain pre-1922 procedures and institutions which pointed toward judicial review, these were of limited significance. The first noteworthy Italian precedent was provided by the Sicilian High Court, created by the Regional Statute of May 15, 1946.

Foreign example can also be stressed. Certain of the practices and procedures in Switzerland, particularly the use of the constitutional complaint, were given serious attention during the drafting of the Bonn Basic Law. The exercise of judicial review by the American Supreme Court has received continued attention in European countries. As one Italian professor has observed, the "impact of Marbury vs. Madison was felt in Italy almost a century

and a half after the decision."[14] To these considerations may be added indirect pressures which were brought to bear by the occupying powers after 1945, especially by the United States in Germany. However, the evidence that direct Allied pressure was responsible for the final action taken is lacking in all three instances.[15]

But it was definitely the reaction to excesses of the Fascist and Nazi regimes which was the most important factor in the decisions finally taken in Austria to restore her Constitution of 1920, as amended in 1925 and 1929, with its provision for a Constitutional Court; and in Italy and Germany, to establish new Courts. There was remarkable unanimity among most of the democratic parties in all three countries to grant the power of judicial review to some type of court. This same reaction helps explain the incorporation of elaborate bills of rights, to protect the individual, and of federalistic arrangements which, while borrowing from the past, were directed against the centralization of the fascist period. Judicial review, in some hands, was widely accepted as necessary to safeguard these guaranteed liberties and arrangements. Disagreements existed over the type of court, its organization and

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[14] Giuseppino Treves, "Judicial Review of Legislation in Italy," Journal of Public Law, Vol. 7, p. 345 (1958).

[15] Even in Germany, there is considerable evidence for the view expressed by Rudolf Katz, later Vice President of the Federal Constitutional Court, that there was no necessary causal relationship between the original Allied demands and the final German action. See comments and literature cited in the author's "The West German Federal Constitutional Court: An Evaluation after Six Years," Journal of Politics, Vol. 20, pp. 283-84 (1958), and "The Bundesverfassungsgericht, 1956-1958: An American Appraisal," Jahrbuch des Öffentlichen Rechts, Vol. 8, pp. 29-47 (1959).

composition, and over the method of selecting the judges. The answers were provided by the special Constitutional Courts. In short, external influences and pressures combined with domestic concerns to explain the final decisions which were taken.

The most controversial of these decisions, as evidenced in the debates in the Constituent Assembly in Austria in 1919-20, and in the German Parliamentary Council and the Italian Constituent Assembly between 1946-49, turned on the manner of selecting the judges. These discussions were concerned with the degree of independence to be accorded the Court from the political departments, especially from the parliament. In all three instances, compromises were effected, which provided for a method of selection differing from that used in choosing the judges of the highest regular court and which allowed for some participation by both houses of parliament in the selection process. Today, in Germany the 20 judges of the two Senates, or "twin courts," are selected by parliament, one-half of them by the Bundestag and one-half by the Bundesrat; six of them are chosen from the judiciary for life and the remainder for 8-year terms. In Italy, one-third of the 15 judges are chosen by the magistracy of the three highest Courts (Cassation, Council of State, and Accounts), one-third by the two houses of parliament sitting together, and one-third by the President--all eventually to hold office for 12-year terms. In Austria, the President, the Vice President, and 6 of the additional 12 judges, as well as 3 substitutes, are appointed by the President from nominees of the Federal Government; the remaining 6 judges, and 3 substitutes, are appointed in part on the recommendation of the

lower house, the National Council, and in part on the recommendation of the upper house, the Federal Council. Unlike a majority of the German justices and all of the Italian justices, these are appointed for life. No instances of the use of the removal power of members by the Courts[16] during the post World War II period have been recorded, though there have been resignations. In the three countries, provisions are made for the appointment to the Courts of practising judges and high administrative officials, as well as professors of law. Indeed, the substantial percentage of professors on all of the Courts[17] reflects the long-established practice in continental European countries to look toward the universities in making high judicial appointments.

Partisan considerations have played their part in the selections, though it has not always been possible to document the extent to which such factors have been controlling. The many early criticisms of the German procedure of selection have been based in part on the charge that political affiliation was more important

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[16] In West Germany, by the Federal President upon the request and with the consent of the Court; in Italy and Austria, by the Courts acting directly.

[17] Of the present 20 justices on the German Federal Constitutional Court, seven are professors (who retain their professional status on a part-time basis); and of the 16 justices in Italy who up to the end of 1958 had participated in the Court's work, some seven were professors of law. The President and Vice President, as well as other members of the Austrian Constitutional Court today, are professors in Vienna and other universities. The Constitutional Council of the Fifth French Republic (which can hardly be designated as a "constitutional court") contains no professor of law for special reasons. See Stanley H. Hoffmann, "The French Constitution of 1958; I. The Final Text and Its Prospects," American Political Science Review, Vol. 53, p. 341, n. 37 (1959).

than professional attainment, but it should be noted that all of the German judges except two have been elected unanimously, and re-election has been customary. The operation of Proporz, that is the proportional allocation of administrative and other posts on the basis of the strength of the two major coalition parties, was discussed in 1957, in connection with the appointment of a new president of the Austrian Constitutional Court.[18] Italy had the greatest difficulties in securing the enabling legislation necessary to implement the constitutional provisions regarding the Court [19] and of selecting the judges after the implementing legislation had been finally passed in 1953. The requirement that 5 of the judges must be selected by a three-fifths majority of the two houses of parliament, where approximately 40 per cent of the seats were held by the left-wing parties which demanded representation, presented particular difficulties and provided the background for much of the maneuvering which occurred.[20]

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[18] See Die Wochen-Presse, Dec. 29, 1956 and Jan. 19, 1957; also Herbert P. Secher, "Coalition Government: The Case of the Second Austrian Republic," American Political Science Review, Vol. 52, p. 799 (1958).

[19] One of the several reasons for this delay was the hesitancy of parliament to set up a body which would restrict parliament's powers. See John Clarke Adams and Paolo Barile, "The Italian Constitutional Court in Its First Two Years of Activity," Buffalo Law Review, Vol. 7, pp. 250-265 (1957-58). This difficulty has reminded these two authors of the legendary story of Bertoldo, who was sentenced to be hanged and then was entrusted with the responsibility of finding an appropriate tree. In Bertoldo's case there were explainable delays.

[20] Note the account in David G. Farrelly, "The Italian Constitutional Court," Italian Quarterly, Vol. 1, pp. 53-56 (1957).

But, withal, there has been only limited criticism of the judges after their selection; on the contrary, there has been general commendation, though the anonymity attached to the method of making decisions and the absence of dissenting opinions may offer protection from public criticism of the partisan and incompetent judge. In short, the judges have become "judicialized" rather than "politicalized" with the passage of time.

The jurisdiction of the West German Constitutional Court is the most extensive and that of the Italian Court the most limited of the three Courts. With variations as to scope and application, the Courts in all three countries have the power to review the constitutionality of federal and state, or provincial and regional, legislation.[21] They pass upon disputes involving "conflicts of competence" between the central governments and those of the states, provinces, or regions, as well as between these latter-mentioned political units. They also can decide jurisdictional disputes between "organs" of government at the national level in Western Germany and Italy, and between the courts, or courts and administrative authorities, in Austria. They can try impeachments or accusations against certain officials at the national level in West Germany and Italy, or against federal and provincial officials in Austria. Both the Austrian and West German Courts have some jurisdiction in cases involving disputed elections and international law. In addition, each Court possesses some special competences

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[21] All three differentiate between "incidental" proceedings, arising out of a pending trial, and "principal" proceedings, i.e., instituted by a governmental organ.

which are unique to it. For example, the West German Court may pass upon the constitutionality of political parties and the forfeiture of basic rights; the Italian Court will have special jurisdiction over the admissibility of a request for a popular referendum (when implementing legislation is passed); the Austrian Court may serve as a court of claims. Advisory opinions were authorized by legislation in Germany until the repeal of the empowering provisions in 1956.

But a mere mention of the competences of the Courts will tell little, without a recognition that their functioning depends heavily upon the nature of the social structures within which they operate. These societies have been referred to as fragmented ones in which there is sharp competition between political cultures. The extent of political involvement by the citizen and the development of institutional pluralism vary in the three countries; the degree of consensus, on procedural if not substantive matters, is lower in all instances than that to be found, for example, in Britain.[22] The legal backgrounds of the three countries, with their differing ingredients of Roman and Germanic law, affect the position of the judges. And there are many other considerations which have a bearing on the role of the Courts. The federalism of West Germany and Austria, and the "attenuated federalism" of Italy, merit particular attention. The nature of the party system (with the trend toward the two-party system in West Germany, government by party cartel "with built-in opposition" in

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22 Note the provocative comparisons in Herbert J. Spiro, Government by Constitution (New York, 1959), ch. 22.

Austria,[23] and shifting coalitions based upon a mass party in the center in Italy) affects the legislative product of the parliaments which is subject to review by the Courts. We must of necessity leave these matters with only passing mention, though with a full appreciation of their significance in appraising the work of the Constitutional Courts.

III

In examining the work of the Courts, some attention may be directed to selected decisions dealing with 1) equality before the law, 2) federalism, 3) delegation of legislative powers, and 4) legislation and public service relationships dating from the Fascist and National Socialist periods.

The Constitutions of each of the three countries contain an almost identical guarantee that "all persons shall be equal before the law."[24] In addition, they include certain other clauses which are to concretize or make more specific the general guarantees. The differences in these concretizations reflect the varied historical circumstances under which these constitutional provisions had their origins.

The significance of the equality before the law guarantees must

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23 An expression used by Otto Kirchheimer, "The Waning of Opposition in Parliamentary Regimes," Social Research, Vol. 24, pp. 127-56 (1957); cf. Charles A. Gulick, "Austria's Socialists in the Trend toward a Two-Party System: An Interpretation of Postwar Elections," Western Political Quarterly, Vol. 11, pp. 539-62 (1958).

24 West Germany: Art. 3; Austria: Art. 7; Italy: Art. 3. In the following discussion, I am heavily indebted to Mr. W. R. Dallmayr for his assistance.

be viewed in the light of the accessibility to the Courts in question. West Germany, to speak generally, provides a more liberal access to the Court than either Austria or Italy. For the individual, two avenues are open to the Court, the most widely used being the constitutional complaint.[25] Under this arrangement, any person can question before the Court a law, an act having the force of law, or an administrative decision and order, which violates his constitutional guarantees, including equal protection before the law. He likewise may, during proceedings in regular Courts, secure the judicial review of legislation, which allegedly infringes his rights, though the courts themselves must determine whether the access to the Constitutional Court is justified. While the Austrian system also provides two somewhat comparable modes of access, they are more narrowly construed than in Germany. In Italy, the access to the Constitutional Court is still more limited, as there is only the one procedure of judicial review. The institution of constitutional complaint, as it exists in Germany and, in a modified form in Austria,[26] is unknown in Italy.

The West German Court, in the cases before it, has applied the general principle that equal protection prohibits differential

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[25] Though there are a number of nuisance and facetious complaints which are submitted, the Court in West Germany has based an increasing number of its important decisions on selections from the 4,800 complaints which had been made prior to December, 1958. An illustration of the facetious complaint was one which contended that the refusal of police to extend the time during which "bars" might be kept open violated the constitutionally guaranteed right of freedom of assembly.

[26] Against individual decrees and acts of the administration, but not against laws, ordinances, or court rulings.

treatment of that which is essentially equal but "it does not prevent that which is essentially unequal from being treated by the legislature differentially in proportion to its inequality."[27] There must be a reasonableness of classification in all instances, even outside of the range of the specific prohibition of discrimination on the grounds of sex, race, descent, language, place of birth, or religious belief. At the same time, the Court--applying the guarantee of equal rights to men and women--has recognized permissible distinctions involving the biological and functional differences of the sexes. Thus, on May 10, 1957,[28] the Court rejected two constitutional complaints by male plaintiffs who alleged that the provisions of the Criminal Code under which they had been committed violated Article 3 of the Basic Law, in that these provisions provided no punishment for women convicted of comparable offenses. In a highly publicized decision announced on July 29, 1959,[29] the Court held that certain provisions of the Civil Code[30] violated Article 3 Sections 2 and 3 (as well as Article 6) of the Basic Law in that they denied the equal status of man and wife with regard to their children. Several housewives had brought constitutional complaints before the Court

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[27] 1 Entscheidungen des Bundesverfassungsgerichts (hereafter cited as B.V.G.E.) 52; cf. Gerhard Leibholz, Die Gleichheit vor dem Gezetz (2nd ed., Berlin and Munich, 1959), pp. 1-12.

[28] 6 B.V.G.E. 389.

[29] BvR 205/58.

[30] Secs. 1628 and 1629, paragraph 1. These provisions had not been altered by the Equal Protection Law of June 18,1957. See J. Leyser, "'Equality of the Spouses' Under the New German Law," American Journal of Comparative Law, Vol. 7, pp. 276-87 (1958).

alleging that these statutory provisions accorded to the father the right of legal representation and certain other rights with respect to the child, and thereby discriminated against the mother. The Court found no biological or functional differences between man and wife which justified the statutory differentiations.[31]

This was the first major instance involving family relations where the Court had based its decision specifically upon the provisions of the Basic Law concerning equality of the sexes. The Austrian Court had in the previous year held the provisions of Section 26, paragraph 3, of the Income Tax Law of 1953, providing for joint taxation of man and wife, to violate Article 7 of the Constitution in differentiating between the sexes for tax purposes.[32] These cases, and others involving the granting of concessions and the treatment of public employees, illustrate the extension of the applicability of the equality before the law provisions to new aspects of social relationships.

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[31] We cannot avoid quoting from an editorial in an American newspaper which commented on this decision: "Thus from Karlsruhe comes the news that father no longer has the last word. It is triumph for the species. Of course, at this point, the German wife has only acquired a sort of deadlock. There is no last word. Give her time, however, and we may be sure that she not only will have deprived mere man of the last word but will, as has her American counterpart, have appropriated it, herself." Durham Sun, July 5, 1959, p. 3.

[32] Decision of March 29, 1958; G 1, 2, 3, 5, 29, 30/58. The Federal Constitutional Court in West Germany had in 1957 invalidated somewhat comparable provisions of the Income Tax Law of 1951, but, while expressing some doubts as to the compatibility of these statutory provisions with Art. 3 of the Basic Law, the West German Court had based its decision on the grounds of violation of Art. 6, paragraph 1, of the Basic Law. 6 B.V.G.E. 55.

Aside from the fact that access of the individual to the Courts is limited in Italy, there are other considerations which explain why the Italian Court seems to have accepted the most restrictive view on equal protection. In review cases, it allows the widest discretion to a legislative finding of facts. Said the Court in a decision in 1957: "the evaluation of the relevance of the diversity of situations in which the individuals subject to the legal regulations find themselves cannot but be reserved to the discretion of the legislature, as long as the limits specified in the first paragraph of Article 3 are observed";[33] however, the "principle of equality is violated when the legislators subject to an indiscriminate discipline situations which they consider themselves and declare to be different."[34]

It has been particularly in cases involving equality before the law that the West German Federal Constitutional Court has given some evidence of its recognition of a higher law above the positive law, that is, of a superior and unwritten constitutional law. Though there were earlier statements by the Court to which natural law adherents might point, the Court perhaps gave its clearest expression of the acceptance of a "hierarchy of norms within the Basic Law" and of certain natural law "guidelines" in a decision of December 18, 1953,[35] involving the equality of the

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[33] Raccolta Ufficiale delle Sentenze e Ordinanze della Corte Costituzionale (hereafter cited as R.U.), No. 3, Vol. 2, 1957, p. 21, at 27.

[34] R.U., No. 53, Vol. 6, ~~pp. 603, 610~~ p. 68 (1958); also cited in Treves, "Judicial Review of Legislation in Italy," loc. cit., p. 351.

[35] 3 B.V.G.E. 225.

rights of men and women. There the Court did acknowledge the existence of "unconstitutional constitutional norms," and in "extreme cases" of possible conflicts between the positive law of the Basic Law and of the higher law.[36] The Court was here reflecting something of the natural law revival in post-World War II Germany, which had resulted in part from a reaction against the earlier positivist justifications for the Nazi regime. Since 1953, it would appear that the Court has been deliberately more careful in its references. It has tended more to stress the "basic principles" of the Constitution as expressed in the specific provisions of the Basic Law, and it is being cautious in providing continuing opportunity to reopen the debates on "unconstitutional constitutional norms."[37]

Of the three Courts, the Italian Court has been the most careful to confine its reasoning narrowly to the provisions of the Constitution and to avoid overt reference to value judgments based on natural law in its decisions. Certainly, the Italian Court has insisted that its jurisdiction is limited to examination of the compatibility of laws and of acts having the force of law with the Constitution and that it is not competent to pass

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[36] Such words and phrases as "supra-positive basic norms," "natural justice," "fundamental postulates of justice," "norms of objective ethics," etc., have been used in cases. Cf. Heinrich Rommen, "Natural Law in Decisions of the Federal Supreme Court and of the Constitutional Courts in Germany," Natural Law Forum, Vol. 4, pp. 1-25 (1959); Gottfried Dietze, "Unconstitutional Constitutional Norms? Constitutional Development in Postwar Germany," Virginia Law Review, Vol. 42, pp. 1-22 (1956).

[37] Cf. the author's "The West German Federal Constitutional Court: An Evaluation after Six Years," loc. cit., pp. 300-304, and the literature there cited.

upon the constitutionality of constitutional norms. The position of the Austrian Court appears to be different from the other two Courts; it has not rejected completely the review of constitutional norms, as has the Italian Court, nor has it claimed the right to subject constitutional provisions to review in the light of higher or natural law precepts. The Court, in its much discussed decision on provincial citizenship on December 12, 1952,[38] recognized that it could not review the substance of constitutional provisions in the light of higher or supra-positive ideas "since, in general, any standard for such an examination is missing."[39] It has, however, insisted upon its power to decide whether a proposed amendment involves a "total revision of the Constitution" and hence is subject to a popular referendum.[40] In this instance, the Court must go beyond the formal requirements of enactment to a consideration of those basic constitutional principles whose alteration would involve "total revision."[41] Thus, in all three

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[38] Sammlung der Erkenntnisse und wichtigsten Beschluesse des VGH (hereafter cited as Slg.), No. 2455.

[39] For pertinent comments by the three Presidents of the Court during the period since 1946, note Ludwig Adamovich, "Probleme der Verfassungsgerichtsbarkeit," Juristische Blätter, Vol. 27, p. 73 (1950), and "Die Verfassungsmässige Funktion des Richters," Österreichische Juristenzeitung, Vol. 9, p. 410 (1954); Gustav Zigeuner, "Zehn Jahre Verfassungsgerichtshof in der Zweiten Republik," Juristische Blätter, Vol. 78, pp. 631-32 (1956); and the somewhat more natural-law oriented position of the present President, Walter Antoniolli, "Gleichheit vor dem Gesetz," ibid., Vol. 78, p. 611 (1956).

[40] See Constitution, Arts. 44 and 140.

[41] At this point, as Professor Felix Ermacora has said, "the Constitutional Court is...the guardian of the Constitution and also the guarantor of the implementation of the requirements of direct democracy." "Die Bedeutung der Überprüfung von Bundesverfassungsgesetzen durch den Österreichischen Verfassungsgerichtshof," Juristische Blätter, Vol. 75, p. 539 (1953).

countries, the quest of the judges for foundations on which to base some of their decisions regarding individual rights and, specifically, the application of the equality before the law provisions of the Constitutions, continues.

The restraints which are imposed by a federalistic system and by federalistic arrangements upon the exercise of arbitrary power at the center were recognized by many of the framers of the Bonn Basic Law and the Italian Constitution. They also helped influence the sequence of events in Austria in 1919-20 and, again, during 1945-46. Since only four of the regions in Italy have as yet been created, the relationships in that state can be called only pseudo-federalistic. Nevertheless, the regions which have been established are guaranteed a significant degree of autonomy which can be altered only by constitutional amendment.

It is easy to overstress the centralizing trends in West Germany, unless there is adequate appreciation of the functioning of the Bundesrat and of the Federal Constitutional Court. Two of the most significant decisions of the Federal Constitutional Court, in particular, have evidenced its efforts to draw the lines between the competences of the Federal and the state governments. In the highly controversial Concordat case, decided on March 26, 1957,[42] while the Court recognized that the Corcordat of 1933 was still a binding treaty, it did sustain the school legislation of Lower Saxony as falling under its reserved powers.

Several events in the spring and early summer of 1958 pro-

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[42] 6 B.V.G.E. 309.

vided the setting for the much publicized atomic rearmament referenda cases involving the states of Hamburg, Bremen, and Hesse and decided on July 30, 1958.[43] In the play of party politics, the Social Democratic Party had sought and failed to secure the passage by the Bundestag of an act to provide for a national referendum on atomic rearmament. It resorted to other tactics to secure what it termed "consultative plebiscites." The states of Hamburg and Bremen, both with legislative bodies containing Social Democratic majorities, passed legislation for holding referenda at the state level. At the request of the Federal Minister of Interior, the Federal Constitutional Court issued on May 27, 1958, restraining orders to prevent the implementation of state laws pending a final decision by the Court as to their constitutionality. The Court, in following certain selected arguments of the Federal government in its joint decision, found the acts of Hamburg and Bremen to be unconstitutional. They represented attempts to provide for the participation of the citizens "in an area within the exclusive jurisdiction of the Federal Government." In addition, "instructions" through referenda from the people of the state to "representatives" were violative of the Basic Law. The Court, in its brief decision, was particularly parsimonious in its discussion of Article 28 of the Basic Law, which recognizes the right of the states to deal with their own constitutional organization as long as they meet "republican, democratic, and social rule of law" requirements. But, recognizing the restricted grounds

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[43] 2 BvF 3/58 and 2 BvF 6/58. See also 2 BvG 1/58 of July 30, 1958.

on which it based its decisions, the Court did give evidence that it would impose limits on the efforts of the states to explore at the behest of a political party uncharted jurisdictional areas under the federal system.[44] These, and other recent decisions, indicate some of the efforts of the Federal Constitutional Court to draw the lines between the competences of the federal and state governments.

The Constitutional Court in Austria has been faced with equally complex problems. After World War II, this Court has taken again as a basis for some of its decisions the theory of freezing of the distribution of competences (Versteinerungstheorie) at a given time in the constitutional development during the First Republic. The date chosen was that of the effectiveness of the Amendment of October 1, 1925.[45] Nevertheless, certain general trends in the decisions of the Court may be noted. During the first years after 1946, the Court's decisions were seemingly directed toward the protection of the modest sphere of reserved

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44 Note the decision of June 16, 1959, in which the Court held a Federal Law concerning the Payment of Compensation Claims of 1956 to be incompatible with Article 120 of the Basic Law in that it required the states to bear expenditures which represented obligations of the Federal Government (2 BvF 5/56); and the decision of July 14, 1959, in which the Court held that the 1957 Federal Law for the Establishment of a Foundation called "Prussian Cultural Property" and the Transfer of Assets of the former Land Prussia was not in violation of Article 135 of the Basic Law. 2 BvF 1/58.

45 This was the date by which the transitory provisions of the Constitution of 1920 had been terminated and before modifications of the federal system brought about by the amendments of 1929. Slg. Nos. 2217 (1951), 2319 (1952), 2546 (1953), and 2721 (1954).

powers of the provinces.[46] However, in later years, the Court has more frequently decided in favor of the Federation. Thus, by a decision in 1951, the Constitutional Court upheld the second Nationalization Law of March 26, 1947, which recognized the power of the Federation to nationalize electricity and power plants.[47] Again in 1952, the Court sustained the law of 1949 providing for the equalization of economic burdens as falling within federal jurisdiction.[48] In a suit brought in 1953, while several provisions of the law establishing the Federal Chamber of Commerce were invalidated, the essential contentions of the plaintiff government of Vienna were rejected.[49] In 1954, the Court recognized that the control of radio fell entirely within the jurisdiction of the Federation;[50] in 1956, the first Nationalization Law of 1946 was sustained.[51] These decisions must, of course, be compared

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[46] Note Slg., No. 2087 (1951), where the Court criticized the Federation for using the powers granted in Art. 12, Sec. 1 (under which the Bund lays down the "basic principles" and the province retains the power of execution) in such a way as to infringe upon the competences of the province by providing detailed regulation of the subject matter in question. See Paul L. Baeck, "Postwar Judicial Review of Legislative Acts: Austria," Tulane Law Review, Vol. 26, pp. 76-77 (1951-52).

[47] Slg., No. 2092 (1951).

[48] Slg., No. 2264 (1952). See the criticisms of this decision in Hans Spanner, "Die Prüfung von Gezetzen und Verordnungen durch den Verfassungsgerichtshof in der Zeit von 1950-1952," Österreichische Zeitschrift für Öffentliches Recht, Vol. 6, pp. 181-82 (1954).

[49] Slg., No. 2500 (1953). See also H. P. Secher, "Representative Democracy or Chamber State" (mimeographed paper delivered at 1959 Annual Meeting of the Midwest Conference of Political Scientists), pp. 9-10.

[50] Slg., No. 2721 (1954).

[51] Slg., No. 3118 (1956).

with those which have favored the provinces.[52] But they must also be read in the light of the realities of the coalition government and of the changing international status of Austria, which have served to encourage federal legislation tending to narrow progressively the area of provincial autonomy.

Though the constitutional provisions have been only partially implemented, regionalism in Italy has provided more than its share of legal controversy. Indeed, more than half of the 381 cases "disposed of" by the Italian Constitutional Court prior to March 31, 1957 involved disputes between the central government and the regions.[53] The most controversial questions have involved the relations between the Sicilian High Court, which was created in accordance with Articles 24-30 of the Special Statute for Sicily on May 15, 1946, and was authorized to pass upon the constitutionality of laws enacted by the Sicilian legislature and the compatibility of national laws with the Regional Statute.[54] After the Italian Constitutional Court began to function in 1956, the problem of the relationship of the two Courts arose. In a decision

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[52] For references to certain of these cases, including ones involving hunting, real estate transactions, area planning, etc., see Felix Ermacora, "Die Entwicklung des Österreichischen Verfassungsrechts seit dem Jahre 1951," Jahrbuch des Öffentlichen Rechts, Vol. 6, p. 339 (1957), and Der Verfassungsgerichtshof (Vienna, 1957), pp. 145-46 . Note, particularly, a decision of June 28, 1958 (G 32/58) in which the Court declared unconstitutional a federal law of 1957 levying import duties on certain products.

[53] Adams and Barile, loc. cit., p. 258.

[54] The Sicilian Statute was converted by the Constituent Assembly, under pressure of time, into a Constitutional Law of Feb. 26, 1948, No. 2.

of February 27, 1957,[55] the Constitutional Court refused to recognize the possibility of a coexisting and competing jurisdiction with the High Court, at least over subjects within the competence of the Constitutional Court. But there are still unsettled questions involving the relationships between the High Court and the Constitutional Court, as recent decisions of the Constitutional Court bear witness.[56] Indeed, the Italian Constitutional Court has evidenced a cautious approach in its efforts to demarcate the autonomous sphere of the sensitive regions.[57]

Thus, the West German Court is looked upon more as a protector of the reserved powers of the states than is the Austrian Court. The decisions of the Federal Constitutional Court appear to be of the greater significance in the total political picture, but its competences are broader. Its decisions have commanded more attention, but it is the newer creation. There has been less concern generated by the decisions of the Austrian Court, possibly because there is little evidence that its decisions have threatened major parts of the legislative program of the coalition government. The jurisdictional controversies between the central government and the regions in Italy, while occupying much of the Court's attention, necessarily have limited application.

The concern over the dangers of unlimited delegation of

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[55] R.U., No. 38, Vol. 2, p. 375.

[56] E.g., a decision of January 24, 1958. R.U., No. 7, Vol. 5, p. 61 (1958).

[57] Note the discussion by P. Biscaretti di Ruffia, "The First Two Years of Functioning of the Italian Constitutional Court," Il Politico, Vol. 23, pp. 477 ff. (1958).

legislative powers was reflected in the attempts of the Constitution makers to place constitutional restraints upon such delegation, as, for example, in Article 80 of the Basic Law in West Germany. This Article, empowering legislative bodies to authorize the Federal Government, a minister, or a state government to issue decrees implementing legislation, requires that the "content, purpose, and scope" of the statutory basis be specific. In 1956,[58] and again in 1958,[59] the Court has found provisions of legislation to be lacking in clarity as to "content, purpose, and scope" insofar as they authorized certain implementing decrees. But, said the Court in 1958, in a case involving designated paragraphs of the Price Law of 1948:[60] It is not necessary that "content, purpose, and scope" be expressly stated in the statutory basis; it suffices if they can be deduced from the whole statute, its styling, its meaning in context, its history. "This can be done in the present case."

In Italy, Article 76 of the Constitution provides that "the exercise of the legislative function cannot be delegated to the Government unless directive principles and criteria have been determined and only for a limited time and for definite purposes." There the Court has recognized that the determination of cases involving the unconstitutional delegation of legislative powers

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[58] 5 B.V.G.E. 71.

[59] 7 B.V.G.E. 282.

[60] 8 B.V.G.E. 274.

is one of its most important tasks.[61] The Court has invalidated, as being in effect "unconfined and vagrant," a law which left to the administrative authorities the determination of contributions (and of the persons required to contribute) to the tourist offices.[62] While it did not do so, the Court might well have borrowed from the language used by Justice Cardoso in 1935 in dissenting in the Panama Refining Co. and in concurring in the Schechter cases.[63]

The complicated history of restraints on legislative delegation, and of the legality of "law-amending ordinances" in Austria, defies brief summarization. But, according to numerous decisions of the Court, Article 18 of the Constitution permits the legislator to authorize the issuance only of implementing and not of "law-amending" ordinances; in order to justify the implementation, the statutory basis must prescribe the essential limits within which the intended regulations will be confined and the purposes toward which they will be directed.[64] The Court has not hesitated to strike down statutory provisions which have violated these requirements. In short, in differing ways but with rather

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61 Note the comments of President Azzariti at the beginning of the second year of activity of the Court, in R.U., Vol. 3, pp. 13-14 (1957). The Italian Court has held that both the law of delegation and the authorized act are subject to its review. R.U., No. 3, Vol. 2, p. 21 (1957). Cf. Giovanni Cassandra, "The Constitutional Court of Italy," American Journal of Comparative Law, Vol. 8, pp. 4-5, n. 8 (1959); Gaetano Sciascia, "Die Rechtsprechung des Verfassungsgerichtshofs der Italienischen Republik," Jahrbuch des Offentlichen Rechts, Vol. 6, pp. 7-9 (1957).

62 R.U., No. 47, Vol. 2, p. 507 (1957).

63 293 U.S. 388 (1935) and 295 U.S. 495 (1935); Adams and Barile, loc. cit., p. 259.

64 E.g., Slg., Nos. 2109 (1951), 2276 (1952), 2462 (1953), and 2664 (1954).

similar results, the Constitutional Courts of the three countries have been concerned with the application of constitutional provisions designed to prevent the legislator from leaving ill-defined and broad discretion in the hands of the administrator.

The Courts have been called upon to pass on the constitutionality of post-World War II legislation which dealt with public officials and military personnel in service during the Nazi regime in Germany, and of legislation enacted during the Fascist and Nazi regimes in Italy and Austria and affecting the private rights of individuals.

In West Germany, Article 131 of the Bonn Basic Law provides that the legal relationship of persons, including refugees and expellees, who were in the public service on May 8, 1945 and had been excluded from the public service on other than civil service or salary grounds, and who had not received positions comparable to their previous posts, was to be regulated by law. Such a law was passed on May 11, 1951. The Court rejected on December 17, 1953,[65] constitutional complaints of certain public officials who alleged that various constitutional rights had been violated by the law. The Court pointed out that, while under international law the state had retained its identity after 1945, the public service relationship had fundamentally changed during the Nazi regime. Consequently, the legislator could, in the exercise of his discretion, determine the status of the plaintiffs without allowing them any grounds for constitutional complaint against the

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65 3 B.V.G.E. 58.

law based upon their previous public service relationships. Similarly, the Court held that the Wehrmacht ceased to exist with the unconditional surrender of German military forces in 1945, and rejected the constitutional complaints entered by various officers, officials, and members of the former Wehrmacht directed against the Law of May 11, 1951.[66] In particular, the Court in a constitutional complaint of a former official of the Gestapo, took the opportunity to answer various criticisms of its previous "131" decisions and presented a lengthy and devastating analysis of the nature of the public service relationship during the Third Reich.[67] The tenor of the Court decisions, in passing upon the rights of officialdom of a previous totalitarian regime, has been consistent with its application of Article 21 of the Basic Law, under which the Nazi-oriented Socialist Reich Party was dissolved and its assets confiscated in 1952,[68] and the successor case, decided in 1956,[69] in which the Communist Party of West Germany was subjected to the same penalties.

In Italy, a large percentage of the "civil liberties cases," have involved the constitutionality of legislation which was enacted during the Fascist period (including the Criminal Code, the Code of Criminal Procedure, and the Police Law of 1931). Indeed, roughly one-third of the first forty decisions of the Court involved the constitutionality of criminal laws and regulations,

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66. 3 B.V.G.E. 288.

67. 6 B.V.G.E. 132.

68. 2 B.V.G.E. 1.

69. 5 B.V.G.E. 85.

most of them of Fascist vintage.[70] To take a few examples: in 1956, Article 157 of the Police Law of 1931 providing for repatriation to the community of origin by administrative decree was held to be incompatible with the Articles of the Constitution guaranteeing the inviolability of personal liberty and freedom of travel;[71] in 1957, a section of the Police Law of 1931 requiring notification in case of religious ceremonies outside of churches, irrespective of the place where held, was considered inconsistent with the Constitution;[72] in the following year, the Court invalidated the provisions of a Law of 1942, which left to administrative officials the discretion to authorize the opening of private schools.[73] "Such a system," preserved "even after the collapse of the regime which established it," said the Court, "is incompatible with the meaning which the Republican Constitution attributes to the freedom of the school."

Under the provisional Constitution of Austria of 1945, two constitutional transitional laws were passed, the one to nullify constitutional provisions of the period after 1933, and the other, to deal with the period after 1938.[74] The latter of these tran-

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[70] Since the Constitution was silent on this point, there was doubt as to whether the Court has the power to pass upon the constitutionality of "anterior legislation," but the Court in its first decision laid all questions at rest as to its jurisdiction. R.U., No. 1, Vol. 1, p. 25 (1956). See David G. Farrelly and Stanley H. Chan, "Italy's Constitutional Court: Procedural Aspects," American Journal of Comparative Law, Vol. 6, p. 326 (1957).

[71] R.U., No. 2, Vol. 1, p. 41 (1956)

[72] R.U., No. 45, Vol. 2, p. 491 (1957); cf. R.U., Nos. 13 and 14, Vol. 5, pp. 101-107 (1958).

[73] R.U., No. 36, Vol. 5, p. 231 (1958).

[74] StGBl., Nos. 4 and 6.

sitional laws provided that "all laws and ordinances...passed after March 31, 1938 which are incompatible with the existence of a free and independent Austria or with the principles of true democracy, or which contradict the legal conceptions of the Austrian people or reflect typical National-Socialist ideas, are abrogated." This provision which, at least after 1953, the Court has held to be applicable without any governmental ordinance designating the laws or ordinances to be abrogated, has provided the basis for many decisions of the Austrian Court.[75]

There is no need to mention the several illustrations which might be cited. Suffice it to say that in Austria, as in Italy, the Court has been continuously concerned with an examination of legislation, or legal norms, dating from the previous regimes and has invalidated many of them which have been violative of the Constitution. In so acting, the Courts in these two countries have perhaps offered some instigation to parliaments which have been slow to revise legislation still bearing some of the Fascist and National Socialist substance as well as imprint.

If we have dwelt at some length on certain selected decisions of these Courts, it has been to indicate the ways in which the Constitutions are being interpreted by the judges of the Consti-

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[75] For example, in 1953 in the decision which declared governmental proclamation unnecessary, the Court abrogated a National Socialist Law of November 5, 1935 on Exchanges, Vocational Guidance and Procurement of Apprentices, which had been extended to Austria after the Nazi Anschluss, as reflecting "typical National Socialist ideas" and as "being incompatible with...true democracy." Slg., No. 2620 (1953). The plaintiff had, moreover, been deprived of certain rights guaranteed under Article 12 of the Basic Law of 1867 and under Article 83, paragraph 2, of the Constitution.

tutional Courts. They have clearly pointed out some of the effective constitutional limits beyond which the legislator and the administrator cannot go in their actions affecting individual rights.

IV

Any conclusion regarding the role of the Constitutional Courts must be highly tentative and subject to much more critical examination. The record of the West German Constitutional Court has occasioned more comment than that of either Italy or Austria, possibly because of the breadth of its jurisdiction, its daring during the formative years, and the controversial character of some of its decisions.

In the relation of the Constitutional Courts to other governmental organs at the national level, there have been crisis periods in each of the countries. The German crisis occurred during 1952-53, when the consideration of the European Defence Community Treaties eventuated in what one critic called a "period of judicial frustration."[76] However, despite the critical position taken at that time in certain official quarters, the Adenauer Government has looked with increasing sympathy upon the Court in recent years. The Bundesrat has furnished more friendly support for the Court than has the governmental coalition in the Bundestag. The Social Democratic Party, as the opposition party, and the governments of

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[76] Karl Löwenstein, "The Bonn Constitution and the European Defence Community Treaties, A Study in Judicial Frustration," Yale Law Journal, Vol. 64, pp. 805-39 (1955).

certain of the states, as the weaker elements in the federal system, have viewed the Court as the protector of the rights of minorities. Although there have been various proposals coming from several circles for the reform of the Court, such minor changes in composition, organization, and jurisdiction as were made by legislation in 1956 and 1959, have emanated from the Court itself.

The crises in the brief history of the Italian Court were those which took place during the long period of delay after 1948, before implementing legislation could be enacted, and after 1953, before the judges were finally appointed. The assortment of internal and external problems faced by the Court, culminating in the final resignation of its first President, De Nicola, in 1957, were brought sharply to public and parliamentary attention. However, the reticence of the Court to go behind a legislative finding of facts in Italy and the limited exercise of the power to invalidate statutes enacted since 1948 have kept parliamentary criticism at a minimum.

In Italy, dissatisfied groups and organizations have on occasion attacked decisions of the Court. For example, the Communists have objected to certain ones respecting land reform legislation; the Church, to others involving the application of constitutional provisions regarding freedom of worship. Some opposition to the Court has also come from the lower bureaucracy. But the really violent opposition has emanated from the regions, especially from Sicily. These reactions, when coupled with the lethargy of the Italian populace toward the Constitution, have combined to create a negative image of the Court which is gradually being erased.

In Austria, neither of the major political parties nor any important pressure groups have made the Constitutional Court a target for continuing criticism. There have been past occasions, as in 1956-57, when partisan differences involved the Court, but these were exceptional instances. The relationship between the Constitutional Court and the other highest courts has provoked some controversy,[77] and there has been continuing academic discussion of the right of access to and the jurisdiction of the Court. Those who favor an expansion of its jurisdiction sometimes look toward West Germany; those who favor a more restricted status, may point toward Italy. But the recent constitutional law and legislation of 1958 dealing with the Court have resulted in only slight changes in its jurisdiction and organization. In Austria, as in West Germany and Italy, there has been general acceptance of the Court, though without either generous enthusiasm or violent criticism.

There have been problems of implementation of decisions. Some have been considered in West Germany, in connection with the atomic rearmament referenda cases, and others with decisions requiring parliamentary action.[78] The failures on the part of the parliament and the bureaucracy in Italy, to accept his strictures as to implementation, help explain De Nicola's threatened resignation in 1956 as President of the Court. But the record does not show any situation comparable to the effective nullification

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[77] See Juristische Blätter, Vol. 79, pp. 263-65, and 287-89 (1957).

[78] 8 B.V.G.E. 1, of June 11, 1958.

of a Court's decision, as occurred in the United States during President Jackson's administration following the Cherokee Indian cases.[79] There have been more warnings to the Federal Constitutional Court of Germany to exercise "intellectual humility", and "self restraint" in not pushing its jurisdictional bounds beyond the limits of the feasible and the practicable, than there have been in Italy and Austria, where the more limited jurisdiction of the Courts and the greater hesitancy to question legislative enactments have been evidenced. Its record indicates that the West German Court is seeking to follow this advice, and is sensitive to the charges of "judicial legislation," but it apparently has been unable to extricate itself from involvement with what the United States Supreme Court would call political questions.

The Constitutional Courts in Europe are in part the products of reaction against a gloomy past, as previously mentioned. Some of their activities have been devoted to a liquidation of this heritage and to a prevention of its repetition. But, today, the Courts are increasingly faced with the new issues which have developed during the post-World War II period. These new issues, as well as the old ones, have continued to involve the application of the pertinent constitutional provisions regarding equality before the law, federalism, and the delegation of legislative powers.

The idea that courts, or some judicial body, should serve as the final guardian of the constitution had its roots and origins

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79 Cherokee Nation v. Georgia, 5 Peters 1 (1831), and Worcester v. Georgia, 6 Peters 515 (1832).

in Europe. It has seen its widest acceptance and expansion in the United States. In turn, American application and judicial experience have helped undergird the European precedents and theoretical support for the formation of special judicial bodies to guarantee the fundamentality of their constitutions.

Today, there are those who believe that the significance of judicial review in the United States is diminishing and that our Supreme Court can no longer serve as an effective protector of individual liberties and minority rights against legislative majorities and executive discretion. Is it possible, asked one thoughtful observer, that we may borrow in the future from the experience of these European Constitutional Courts rather than contribute to it--that there will be another period in the "give-and-take between the new and the old worlds?"[80]

However, it is still too early in their history to speculate about the future of these Constitutional Courts. During the past decade, they have not faced that type of crisis which economic adversity, the messianic leader, or foreign military experiment might provide. Until such a time there will be uncertainty as to the degree to which constitutional democracy today reflects an active faith, and the extent to which it is the formal expression resulting from Allied political pressure, a prosperous economy, and anti-totalitarian resentment.[81] Only then will we know how deeply rooted are the constitutions for which these Courts serve today as interpreters and guarantors.

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[80] Gottfried Dietze, "America and Europe - Decline and Emergence of Judicial Review," Virginia Law Review, Vol. 44, p. 1272 (1958).

[81] Cf. Leonard Krieger, The German Idea of Freedom (Boston, 1957), p. 468.

SPEECH GIVEN BY ROBERT DECHERT
BEFORE THE AMERICAN POLITICAL
SCIENCE ASSOCIATION - MAYFLOWER HOTEL
WASHINGTON, D. C. - SEPTEMBER 10, 1959

"SECRECY IN GOVERNMENT - DOES IT EXIST?"

In the debate which has been carried on since the founding of this country as to the degree of nakedness before the world with which our country's business should be conducted, those who would have the United States Government in the position of the young girl in the once-controversial painting "September Morn" have always sought support by choosing "bad words" to hurl at their opponents.

"Secrecy" is such a "bad word", implying to the mind of the unwary listener that someone is hiding something. When an editor of a metropolitan newspaper writes an editorial praising (or blaming) the President, is he guilty of "secrecy" or of improperly "withholding information" if he fails to disclose to his readers that upon taking a poll of his editorial advisers he found them evenly divided upon the wisdom of his proposed course, but that he as the responsible head made his own choice of a course of action after receiving such advice?

No one, I think, would call such action by the editor an exercise in "Secrecy", and yet when we deal with executives in government, that bad

word is thrown at them if they do not cheerfully lay open all the advice given to them by their own advisers.

This matter of the use of words implying an attempt at concealment is a frequent technique of those who advocate a goldfish bowl way of life of officials in the Executive Departments. Think of the term, "Executive Privilege". "Privilege" is another word with unpleasant connotations, bringing to mind such expressions as "privileged classes", "special privilege", and the like. The word "Executive" attached to it implies that this "privilege" is something which only the executive departments possess, whereas the truth is that the concept to which it refers applies equally in the Congress, the Courts, and the Administration, and in business generally.

How then would I refer to the concept which is at the root of today's discussion? The concept really falls into two parts. These I would call:

(1) Common safety; and

(2) Common decency.

Perhaps the one term which would best cover both those parts is "Common Sense.". That quality seems to me to be the one which shines through President Eisenhower's recent discussions of both parts of this question.

Let us then proceed under these two headings.

(1) COMMON SAFETY

(1) Are there matters which in the interest of the safety of the country must for appropriate periods of time be kept within the family of those

charged with advancing the interests of the country as to such matters?

The answer to this seems to be an unqualified "Yes", whether the particular "family" charged with the responsibility as to that matter is Congressional or Judicial or Executive.

Let's look at part of the record:

(a) Congressional: In this Capital City, in the great Archives Building -- a source of deepest inspiration to every visitor to Washington -- item No. 7 which flanks the original Declaration of Independence is another original, signed document which bears the caption: "The Agreement of Secrecy - November 9, 1775." Under that caption appears this further legend: "Earlier resolutions enjoining secrecy on the members were replaced by this binding agreement which each member of the Continental Congress was required to sign."

(b) Judicial: The August 1959 issue of the "Journal of the American Judicative Society" (Vol. 43, No. 2) contains a speech made by Mr. Justice Tom C. Clark entitled: "Internal Operation of the United States Supreme Court". In this on page 49 Mr. Justice Clark speaks of the Friday conferences at which the Justices discuss the pending cases from 11:00 A.M. to 5:30 P.M., saying:

> "The Court must carry on these Friday conferences in absolute secrecy; otherwise, its judgments might become

prematurely known and the whole process of decision destroyed. We therefore guard its secrets closely. There must be no leak."

On page 50 Mr. Justice Clark discusses the voting procedure on the question of whether the Court will consent to hear argument on a case, by granting the petition for certiorari. Here only four votes (out of the nine Justices) are enough to grant such a hearing, but rarely is the vote on this matter announced. As to this procedure, Mr. Justice Clark said:

> "After discussion of a case, a vote is taken. We each have available a large docket book, evidently, from its appearance, handed down to us by the first of the Justices. It has a hinge on its flyleaf which is kept locked. There we keep a record of the votes."

(c) Executive: In the executive department of the government the two phases of information which most clearly fall in our "Common Safety" category are probably those which relate to:

(A) Defense of the country; and

(B) Foreign Relations.

Oddly in his article entitled "Constitutional Law: The People's Right to Know" in the July 1959 issue of the "American Bar Association Journal", Senator Hennings made only the barest mention of the defense of the country as a reason why we should not expose to all the world every

step of the development of defense mechanisms or of offensive weapons. He said, however, the following:

> "It is inescapable that the proper and effective exercise of some of the duties given to the President under the Constitution requires secrecy under certain circumstances. To the extent that this is so, it would seem that the Constitution by necessary implication gives the President power in certain cases to withhold information from the public."

The Senator then discusses the field of foreign affairs as an "example of a constitutional power of the President necessarily involving some secrecy for its effective exercise." This is followed by a single paragraph referring to defense as a similar field, with a footnote in which the only example is taken from President Lincoln's contract with a special agent 97 years ago.

(2) Under our "Common Safety" heading, it would seem that few people would really question the right -- and indeed the duty -- to protect from the world at large the data which is vital to our defense.

However, I see by the New York Times of August 30, 1959, through a dispatch from Pugwash, Nova Scotia, that one group did so -- 26 scientists from 8 countries meeting there at the invitation of Cyrus S. Eaton, for whom Bertrand Russell of England was apparently spokesman

in demanding "the renunciation of official secrecy" on research by the United States and all other countries in the fields of possible chemical or poison warfare. Only thus, the group warned, could the world eliminate "the amnesia of secrecy". -- In juxtaposition to this proposal to share the innermost secrets of the power of destruction was a portion of the same news report, which read:

> '"The meeting.....was closed to the public. The scientists were not willing to explain all their conclusions in detail."

In this dispatch we find echoes of an earlier article, also in the New York Times, which told of a strange anomaly: a hearing before Congressman Moss' Subcommittee on Freedom of Information on November 18, 1957, at which a representative of the Department under consideration was declined permission to speak! The Times headline read: "Two Pentagon Aides Balked at Inquiry."

On the day of that hearing Chairman Moss had gone on the air at 8:00 A.M. to report what was going to be the result of the hearing to be held later that day. Then came his opening statement, distributed to the press in advance but not to the Department of Defense. That opening statement seemed to the General Counsel of the Department of Defense (present at the hearing to represent the Department) clearly to contain serious errors of fact as to past testimony. Asking for 2 minutes to point out these errors by reference

to the printed record, the General Counsel was roughly gavelled down by the Chairman. At 2 P.M. he was likewise denied by the Chairman the privilege of even presenting a letter to correct the record (but unfortunately another member of the subcommittee later placed the letter in the record.)

Freedom of Information is no one way street. He who claims an evil exists must, if he wishes to be believed, be scrupulously fair himself. I suggest that some of those most vocal in this field fail to remember that fundamental rule.

If, however, we accept the wisdom and necessity of a certain amount of restraint in connection with matters of great importance to the defense and foreign relations of our country, the questions are: how much; how closely shall they be held; and how long?

These questions must be answered in the same way for all as to any particular piece of information. Some acceptable method must be established for stating the rules required for the safety of the country. Chaos and anarchy would result if each person were allowed to decide for himself, after receiving such vital information, whether it is properly placed in the security category.

Yet amazingly that very privilege of being the sole judge themselves is what some people claim. A syndicate writer in the "Parade" Sunday magazine section of August 23, 1959, wrote:

"Only 10 per cent of all classified documents actually contains security information,' one General insists. Secrecy stamps often are used to hide embarrassing mistakes."

A quotation allegedly from an unnamed General is of dubious value. In his own deposition earlier in a court case the writer made a similar statement as representing his own personal judgment. Perhaps in the meantime he has been promoted! On this point let me say from 2-1/2 years as a trouble-shooter in the Department of Defense as its former General Counsel, I disagree most heartily with both of the statements of alleged fact in the above quotations. The classification of documents is carried out under a carefully prepared Directive of the Secretary of Defense which covers only papers containing security information. I, myself, have never seen any paper on which security classification stamps were placed "to hide embarrassing mistakes".

Generalities are easy, particularly for those who have ready access to headlines. But the possession of power resulting from such ready access might well teach the holders of such power the virtue of hearing both sides first. It is a sad fact that a sensational charge which just catches the headline of the afternoon paper is rarely equalled in its public impact by the subsequent fully documented refutation.

I, offcourse, do not claim perfection for either the Department of Defense Directive, prepared after most careful consideration of the whole subject and of a Report dated 8 November 1956 by the Committee on Classified Information, consisting of Charles A. Coolidge, Chairman, Admiral Wm. M. Fechteler, U.S.N. (Ret.), General John E. Hull, USA (Ret.), General Gerald C. Thomas, U.S.M. (Ret.), and Lt. General Idwal H. Edwards, USAF (Ret.), or for the administration of the matter under that Directive. However, both the Directive and its implementation represent an earnest attempt to lay down and to operate under rules applicable to all, which shall protect the safety of the country.

The essentials in the administration of a government department are the same as in many other organizations, which have been well stated by Ben McKelway as President of the Associated Press in connection with the making of a good news organization:

> ". . . good sense, good balance, restraint and an exhibition of an adult sense of responsibility."

These are the principles sought to be followed in this field by the Department of Defense.

(II.) COMMON SENSE AND COMMON DECENCY

We now come to consider a second general type of information (that is, information of a non-security nature), which in the conduct of

sensible relations among men should not be put in a position where it may be emblazoned in newspaper headlines.

One of America's great law teachers and writers, the late Professor Francis H. Bohlen, authority on the law of Torts, used often to refer to the "Estoppel of Common Decency" as a rule of conduct between men of good will, often more powerful than legislative or judicial directives.

Judge Alexander Holtzoff of the U.S. District Court for the District of Columbia at page 10 of his opinion in the Vance H. Trimble case (dealing with a demand to secure and inspect certain payroll records and documents concerning the disbursement of government funds by the U.S. Senate) stated the universality of this rule of Common Sense in the following language:

> "It would hardly be urged that the press is entitled to access to written material that the law does not regard as being automatically open to public inspection, such as, for example, staff reports submitted to Congressional Committees, until the latter chooses to release them; letters to the President from his advisers, unless he sees fit to make them public; memoranda written by personnel of executive departments to their superiors, or drafts of contemplated or tentative opinions of members of the judiciary until they take final

form and are publicly handed down." (Vance H. Trimble v. Felton H. Johnston et al., Civil Action No. 921-59 in the U. S. Dist. Ct. for the District of Columbia; opinion of Judge Alexander Holtzoff dated June 2, 1959.)

What then are examples of the kind of information which in the exercise of this Common Sense or Common Decency should not be spread or broadcast? Some such examples are clearly set forth in Section IV. of Department of Defense Directive No. 5200.6 of 22 March 1957, entitled "Policy Governing the Custody, Use and Preservation of Department of Defense Official Information which Requires Protection in the Public Interest". This Directive was another result of the studies of the distinguished Committee under Chairman Charles A. Coolidge which I mentioned earlier.

This Directive declares that making maximum information available to the public is "the fundamental policy of the Department of Defense". It however also points out that under the principles of common sense and common decency there should in general not be given out certain non-security material such as peculiarly personal information about individuals, such as their medical and personnel records and other material, when release might injure innocent persons or violate confidences.

The difficulty of establishing exact specifications in this field is clearly brought out in the following quotation from the book "Freedom or

Secrecy" by James Russell Wiggins, Executive Editor of the Washington Post and Times Herald:

> "It is not easy to prescribe, in complete detail and specifically all the government information that should be divulged and all that properly may be withheld. It is possible to describe the spirit, the climate, the atmosphere that ought to pervade the government of a country that is democratically ruled. All the employees of government, elected and appointed, ought to be imbued with the feeling that the government does indeed belong to the people, who therefore have a right to know about all of its transactions, except for those expressly reserved to accredited persons by law or regulation."

Disputes do arise in one branch of this total area which is described as preliminary advice to decision-makers from their advisers. DCD Directive No. 5200.6 describes this more fully as follows in Section IV C8:

> "8. Conversations or communications between members of the Department of Defense, or between such members and representatives of other agencies of the Executive Branch, which are merely advisory or preliminary in nature and which

do not represent any final official action and any documents or reproductions concerning such advice".

The vital matter here is to protect the ability of the team to function (whether the team be in the legislative, judicial or executive branches) in these two most important respects:

(1) The process of decision-making itself; and

(2) The ability to obtain frank, out-spoken advice.

As to the first of these, the position of the men exercising judgment is rendered hopeless if at all times -- both before the decision is made (as is now being demanded in some quarters) and at all times in the indefinite future after the making of the decision -- the decision-maker is subject to "second-guessing" by those who may rummage through all the advice given to him before he made the decision in question.

Out of 1,000 decisions made, subsequent events may prove 5 to have been less wise than if another course had been selected. In each of those 5, one of his four chief advisers may have preferred the course which later events proved better. Publication of the contrary advice of that one man in those 5 situations may go far to discredit the whole performance of the Executive, since later publication of the 995 correct decisions, and of the advice of the 3 other advisers in these 5 cases, will never catch up with the damage done by publicizing the fact that in the 5 "wrong" decisions he went counter to the suggestions of one adviser.

How many sensible men would willingly put themselves into a situation of that sort? Adoption of a course requiring publicizing of all advisers' recommendations might seriously cut down the number of men willing to take tough decision-making positions.

Even worse would be the effect of a contrary policy upon the ability of the decision-maker to obtain out-spoken and completely frank advice.

The dead hand which is one of the most stifling things in any large organization, both governmental and private, is the adherence to the doctrine: "Don't stick your neck out!" Ability of an executive to secure outspoken advice is a prime essential. It is obvious that obtaining such advice will be more difficult if advisory memoranda are at all times to be open to public observation. From 19 years of teaching part-time in Law School I know that the student who often contributed most to the class discussion of knotty problems was the man who was willing to speak up as to his own initial reactions. Such a statement served to sharpen the focus on the problem.

Let us not stifle the likelihood of such willingness of advisers to speak out with complete frankness. Common sense and common decency require the decision-makers to have the best available advice and to have freedom from second-guessing on the basis of publicizing the advice of their staffs.

President Eisenhower has clearly stated this proposition on various occasions, particularly in his letter of November 12, 1958, to Representative Clare Hoffman, when the matter under consideration was the portion of the report of an Inspector General to the Secretary of his military department which was purely advisory in nature (the Inspectors General being traditionally advisers of high rank especially close to the Secretaries of the three military departments):

> "And in my judgment the public interest is not necessarily served by divulging the advice, suggestions, or recommendations which subordinate employees periodically make to their superiors. In this connection, recommendations of Inspectors General have been a most useful advisory tool in administering the military departments; and historically, recommendations and other advisory matter in such reports have not been released. I think this practice is a correct one, and is in the best interest of the Nation. At the same time, I want to add that the facts are distinct from advice and recommendations in these reports."

The view thus expressed was repeated by the President in a letter of less than two months ago, dated July 21, 1959, addressed to Mr. Clark Mollenhoff.

It will be noted that the President did not deem it necessary to refer to the separation of powers under the United States Constitution as

the authority for this rule of Common Sense. However, if anyone should turn legalistic, the authority is there. Each branch must have the ability to function, and no branch can be deprived of that ability by demands of another branch or of the public at large.

IMPLICATIONS OF THE CHANGED POSITION OF WESTERN EUROPE FOR UNITED STATES FOREIGN ECONOMIC POLICY

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I.

The dominant place of Western Europe in the foreign economic relations of the United States is known to every school child -- except perhaps those who have studied "community helpers" to the total exclusion of beaver pelts and Spanish galleons. Our origins lie in European exploration and commerce; our peopling reflected the problems of Europe before it reflected the possibilities of America. Resources for our development came from Europe, in money, goods, and people. European markets aided our great agricultural growth; there perhaps began the reshaping of the European economy in response to changes in America. The tariff -- for a century the main element in our foreign economic policy -- was essentially a tariff against European goods.

Though there were major shifts in relative financial and economic strength between 1890 and the end of the first World War, Europe was still very much at the economic center of the troubled '20s and '30s. The problems posed in these two decades about the adaptation of the American economy to its new place in the world remained unsolved when the Nazis invaded Poland. They have greatly influenced American policies since that time. The desire to avoid the difficulties of the interwar period was a major ingredient in the thought of those who during the war shaped the proposals for international economic arrangements that the United States was later to urge on the world. No doubt this risked "fighting the last peace" and thereby losing this one, but in the event the foundation proved a rather good one and American policy remained capable of dealing reasonably well with the unexpected.

Though Europe had provided many of the "lessons of last time," the resulting American proposals about trade, exchange rates, capital movements, and international action to meet economic fluctuations were global measures, not policies toward Europe. But the countries of Europe

were expected to play a key part. First there would be intensive efforts at reconstruction with American help. Then Europe, and perhaps especially Britain, would, with the United States, provide the core for the building of a new world economy. That was the gist of the thought that went into Article VII of the Lend-Lease Agreements, Bretton Woods, Hot Springs, and the British loan. Opinion differed about how long reconstruction would take and what the shape of the European economy would be -- Germany's place was a nagging, unsettled issue; there were arguments about the pace and economic impact of the decline of colonialism. Still, there must have been very few people in this country who on V-E Day imagined that for the next decade the main effort of the foreign economic policy of the United States would be directed almost entirely toward Europe. It is not that Europe proved more important than was expected; there was never any doubt of its importance, save perhaps among those who carelessly identified a relative decline in strength and a shift from the central position with the approach of unimportance. The unexpected result came from the fact that unforeseen conditions called forth a more specifically "European" policy than anyone anticipated. Major innovations in American foreign economic policy were made quickly, and, as events have shown, effectively.

Now conditions have changed again and call for new policies. The assumptions of the old policies no longer apply to the Europe of 1959. Some of the assumptions appropriate to the new conditions are quite clear and their consequences for policy can be seen. In other respects the requirements of the new situation remain unclear.

II.

Twenty years ago it would not have been difficult to get strong and respectable support for the view that the most obvious and persistent weaknesses of American foreign policy were: lack of continuity; failure to respond to new problems except by traditional and therefore often inappropriate means; undue legalism; a related tendency to demand guaranteed results when the nature of international life made this impossible; and, of course, the whole range of shortsightedness about the nature of our interests comprised in "isolationism." How much of this indictment still applies, or what new vices have displaced the old, are matters to be argued elsewhere. What is relevant here is that American policy toward Europe for at least the last decade and a half has to a striking degree exhibited the opposite characteristics. Naturally the record has been far from perfect. Americans and our European friends have been quick to call attention to many inconsistencies, mistakes, delays, and unnecessary trouble. Even so, postwar American economic policy toward Europe has had a solid core of continuity, consistency, innovation, pragmatism, flexibility, and largeness of view.

Lend-lease started it. That measure was sparked by the wish to provide immediate aid to the countries fighting aggression. It was illumined by the desire to avoid saddling them, and the world, with tremendous debts comparable to those that disturbed the last peace. "What I am trying to do is to eliminate the dollar sign," President Roosevelt told his press conference on December 17, 1940. If he lent his garden hose to a neighbor to put out a fire, "... I don't want $15 -- I want my garden hose back after the fire is out." That spirit was essential to the giving of lend-lease, but it concealed the questions of the ultimate settlement. There would be little returnable hose; the proposal to accept repayment in kind got rid of the dollar sign only in a superficial sense. Formulas for settlement came and went during the war but none were adopted. Leaving the outcome uncertain seemed risky to some but in the end it worked out quite well so far as terms of payment were concerned. The abrupt ending of lend-lease before peacetime substitutes had been devised caused a jolt, however.

The next two years were a period of revelation and adaptation. Aid for recovery was provided to Western Europe, largely in loans. It became apparent that these were inadequate. Soviet action sharpened awareness of the stakes involved. The failure of the convertibility clause in the British loan showed that the transition to the world of the Fund, the Bank, the ITO, and global multilateralism would last longer than had been expected. Many thought the goal itself was Utopian or misconceived.

These events set the stage for the first full formulation of a specifically European economic policy by the United States. In the scale and manner of its use of foreign aid and in the acceptance and encouragement of economic regionalism the Marshall Plan made major innovations in American foreign economic policy. The economic essence of the European Recovery Program lay in two points. One was the transfer of resources from the United States to Europe in order to permit Europe to live beyond its means for a few years so as to hasten economic recovery and improve the political milieu. The decision to give this aid primarily in grants reflected again the "lesson of last time" about international debts. The scale of the aid, however, was far beyond anything that had been judged necessary when wartime plans were being laid for European recovery.

The second essential element of the Marshall Plan was the removal of obstacles to the effective use of European resources. Many of these were internal in each country and were attacked by a number of means with varying success. Those that directly impeded trade and payments among the Western European countries were the targets of international action. By increasing the means and ease of financing trade, even if this meant passing on some American aid to others, and

through the step-by-step removal of quotas, the European countries, prodded by the United States, did much to enhance the use of their resources. Since these measures were not extended to Europe's trade with the rest of the world,* the OEEC countries became a regional block discriminating in favor of trade among themselves, and specifically against dollar trade. To accept and encourage such an arrangement was a marked departure from American policy, which aimed at equal treatment and global multilateralism. Different people approved this course for different reasons, not all compatible with one another. Probably the most general area of agreement was on the view that in the circumstances usually described as the "dollar shortage," the choice was between liberalization with discrimination and little or no liberalization for some time to come.

Before the Marshall Plan had run its scheduled course, Korea, rearmament, and the drive to turn NATO into an effective military instrument came to dominate United States relations with Europe. New burdens were added to the European economy, new American aid was provided to carry them, and there were diversions of effort from the earlier lines of development. But the central strands of economic policy remained the same. American aid continued, with military aid rising rapidly to a peak in 1953, while economic aid declined.** European cooperation continued and grew, still largely based on discrimination against dollar imports. European recovery also continued, whether measured by production, consumption, or foreign trade and payments.

American economic policies toward Europe were not confined to aid, the encouragement of cooperation, and acceptance of discrimination against dollar goods. Other measures, some aimed specifically at Europe, others having a primary purpose elsewhere, also contributed to the process of European recovery. In a series of negotiations from 1947 onwards the United States made substantial tariff concessions to European countries. Often enough the reciprocal concessions the United States received had very limited immediate effects because of European quotas and exchange controls. Though there were some notorious cases in which American concessions were later withdrawn, and though agricultural trade control measures and Buy American practices have prevented some European trade with this country, European exports to the

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* With the important exceptions that EPU clearings included trade with the sterling area and with the dependences of Continental countries.

** In the five years before Korea (i.e., through fiscal 1950), American aid to Western Europe came to $17.9 billion; in the next five years it was $15.5 billion (the figures refer to military and economic aid actually used and totalling net grants and credits; Greece and Turkey are excluded but dependencies of Western European countries are included).

United States have increased steadily and rather rapidly. Practices adopted in the latter part of the Marshall Plan, the handling of some military aid arrangements, the expenditure of substantial American defense funds for the maintenance of troops and bases abroad, and the opportunities European countries had to earn some of the dollars the United States spent in the rest of the world or provided as aid to underdeveloped countries all yielded funds that strengthened Western Europe's economic position.

This sketch of familiar history is enough to emphasize the continuity, consistency, flexibility and innovation that have marked American economic policy toward Europe for a decade and a half. Now the main aims of that policy have been achieved. Europe is standing on its own feet. It is not necessary to argue here how much American policy contributed to this improvement of Europe's position. The important questions concern the kinds of American policy called for by the new situation to which the old assumptions about European economic weakness and the dollar shortage no longer apply.

III.

The great change in the economy of Western Europe and in its relations with the rest of the world has been widely remarked on. It can be measured a dozen different ways but it is so easy to discern that it needs no statistical demonstration. The marks are numerous. Production and consumption are at record heights. For a number of years the economy of Western Europe has grown more rapidly than that of the United States. Throughout the '50s Europe has been adding to its holdings of foreign exchange and dollars. During the period of greatest growth, from the end of 1953 to the end of 1958, the holdings of the OEEC countries rose from $11.6 to $19.3 billion, an increase of more than two-thirds in spite of Suez and two American recessions. In 1953-54 and even more markedly in 1958-59 Europe showed that it could withstand and overcome the impact of American recessions. Of course, Europe is not immune to what happens here or in other parts of the world. Some kinds of American fluctuations could be quite damaging to the area. The experience of these five years shows, however, that the old picture of a Europe so dependent on the massive American economy that a ripple here is a tidal wave there must be displaced. Western Europe has found a broad enough economic base and enough dynamism of its own to be regarded as a largely independent source of economic power.

The improvement in Europe's position was given a formal cachet at Christmas 1958 when the principal European currencies were made convertible for non-residents. The Swiss franc had been convertible all along, some of the others increasingly so for several years. Still,

the change was enough to make a difference. More important, convertibility had long been thought of as a goal that would signal the end of European recovery and the achievement of a sound economic relation with the rest of the world. Convertibility can be taken to mark the virtual elimination of the European soft currency problem; it implies a much more favorable view of the long-run position than the expectation of chronic dollar shortage would warrant. The limitation of convertibility rights to non-residents expresses a reservation about Western Europe's payments position. Since the limitation extends the length and breadth of the sterling area and the franc area, it can have some bearing on the direction of international trade. Intra-European trade, however, will be financed in convertible currencies. The automatic credit provisions of the European Payments Union have given way to the stricter rules of the European Monetary Agreement, which also encourages the use of normal exchange markets instead of the monthly clearings.* To establish convertibility is not to guarantee its perpetuation, but the desire not to move backward is likely to have an important influence on the future actions of European governments. Robert Triffin, one of the closest American students of these matters, has warned that "the convertibility decisions ... were both overdue and ill-prepared."** But the problems he foresees in making a gold exchange standard work as trade expands are not peculiarly European problems.

Even with the reservations and warnings, the return to convertibility, taken with the conditions that made it possible and the steady improvement that led up to it, marks a Europe radically different from that of ten years ago -- or of Europe 14 years after the first World War, in 1932. What we see now is a Europe that is rather well off, that has found the means of economic growth and has not exhausted its possibilities, that has good foreign trade prospects and that has substantial foreign exchange reserves and a large enough domestic base to cushion itself against international fluctuations.

One always hesitates to make so optimistic a diagnosis. The literature of 1928 and 1929 -- not just the pronouncements of politicians and the surface currents of journalism, but the thoughtful literature in which able and perceptive people marshalled a great deal of evidence -- is full of awful warnings. Yet even with this memento

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* Randall Hinshaw, Toward European Convertibility (International Finance Section, Princeton University, November 1958), pp. 22-31.

** R. Triffin, "Tomorrow's Convertibility: Aims and Means of International Monetary Policy," Banca Nazionale del Lavoro Quarterly Review, June 1959, p. 131; the quotation summarizes the theme of Triffin's earlier article, "The Return to Convertibility: 1926-1931 and 1958-?, or Convertibility and the Morning After," in the same journal, March 1959, pp. 3-57.

mori there seems little justification for policy prescriptions that do not give full weight to the changed circumstances. One will, of course, seek to be prudent and conservative in assessment and to provide policy with safeguards that permit quick action if assumptions prove wrong. But the assumption must be, I think, that Western Europe is now well placed to handle its economic problems and to play an increasingly important part in strengthening and expanding the free world economy.

Of course, not all European countries are equally well off and none can escape major problems. Some countries will still have some difficulty with their balances of payments. Italy has structural unemployment. Much of southern Europe remains underdeveloped. Spain is only at the beginning of what may be a long process of economic adaptation. Throughout the Continent there are problems of economic adjustment, some occasioned by the regrouping of resources that goes with the new forms of economic cooperation, some the result of other changes. One of the most important is the long-run energy problem. This is not likely to be solved without major compromises between economic advantage and the rigidities of the existing structure of coal mining. If much of Europe is shifting toward an economy of increased consumption and higher wages, other adjustments may be necessary. We can also expect a continuing clash between traditions of restriction and regulation and newer forces making for competition.

Anyone who chooses to generalize about the future economy of Western Europe must answer questions about France. Until recently it was hard to make optimistic assumptions about that country, except in the very long run. Now there is at least a reasonable case for believing that France may overcome some of its major difficulties. During much of the postwar period a good expansion of production and capacity has been coupled with chronic inflation and repeated derangement of the external accounts. The combination of measures taken at the end of 1958 put France on the right track: devaluation, the Rueff financial reforms, and the resumption of trade liberalization. It remains to be seen whether the De Gaulle government will continue to be able to hold the line for a longer period than its predecessors against immediate pressures. Algeria is, of course, crucial, whether as a war to be financed, a development project for which capital has to be found, or the key to Saharan oil. While there are grounds for optimism in the French economy's initial responses to the common market,* there are also long-run uncertainties. Other uncertainties concern the economic development of the French Community, with which France carries on an important part of its trade. The franc area, once safely in Parisian

* See, for instance, "Frankreich und der Gemeinsame Markt," Neue Zürcher Zeitung, August 4, 5, 1958.

control, is almost certain to work somewhat differently as more territories gain their autonomy.*

Whatever may lie ahead for France will have an important effect on the rest of Europe. Nevertheless, it is clear that the assumptions of American policy in 1959 must be very different from those of 1949. Disorganized and retarded production, inadequate consumption and investment, serious current dollar difficulties and the expectation of chronic dollar shortage, dangerous sensitivity to the fluctuations of the American economy -- none of these things can now be taken to characterize the economy of all Western Europe. European countries may still have balance of payments difficulties, but the area is no longer the troublesome center of a worldwide soft currency problem. The tight national control over trade and payments that held back recovery has given way to extensive liberalization and a high degree of cooperation among European countries -- which poses some new problems. From these changes in Europe's condition flow implications for the foreign economic policy of the United States, towards Europe and towards the rest of the world. In the late '40s the United States successfully devised policies that took account of Europe's position, though this meant changing the assumptions on which our policy had rested up to that time. A question for the immediate future is whether we can make another equally effective shift.

IV.

The implications of the changed assumptions fall conveniently into three major groups: the consequences of Europe's enhanced economic strength for the carrying of the free world's burdens of defense and development; the implications of convertibility for Europe's position in world trade and finance; and the questions linked with the future of Western European economic integration. In a number of respects American policy has already adapted itself to the changed circumstance. But there are some questions with which we have only begun to grapple.

Economic aid has altered to match the new circumstances. The economic assistance that was the core of the Marshall Plan declined as military aid first rose and then fell and the European economy expanded. What is left is a fairly modest amount of assistance divided between

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* On some of these problems, see Gaston Leduc, "L'Organisation de la Zone-Franc: Evolution Récente et Vues d'Avenir," Revue d'Économie Politique, May-June 1959, pp. 335-50; Pierre Moussa, "Fonctionnement et Equilibre de la Zone-Franc," same, pp. 351-61; Gilbert Mathieu, "La Zone Franc: un ensemble mouvant et hétéroclite," Le Monde, (weekly edition), August 6-12, 1959.

some special purposes (such as the support of Berlin and the productivity campaign) and a few countries presenting special problems, principally Spain and Yugoslavia. After the Suez crisis there was a standby credit to help Britain defend the pound, and the United States joined with European countries and international institutions in helping France meet a balance of payments crisis. Similar combined action was taken to help Turkey and most recently Spain when they undertook important financial reforms. Aid on this pattern -- if it can be called a pattern -- is directed at particular cases and is not "aid to Europe" in the sense of the Marshall Plan.

If Europe no longer needs aid from the United States to maintain a good rate of economic growth, there is little doubt that much of the world does. American policy has settled down to the point of accepting without great question the general idea of continuing aid to underdeveloped countries for some time to come. Soviet policy may be taking the same course. Without falling into the trap of an oversimplified view of the "competition" of the Soviet world and the free world in this sphere, one can certainly make a strong case that an increase in the free world's investment in development would be desirable. The improvement in Western Europe's economy provides an opportunity to do this.

Europe is already doing a good bit. Britain participates in the Colombo Plan, provides for some colonial development, and has done something to extend aid to newly-independent members of the Commonwealth. France has a sizable program of public investment in its African territories. Germany pays reparations to Israel and provides some government support for private development credits. The European Economic Community has an investment fund for the development of dependent and associated territories. Some other countries have special programs; most contribute to UN technical assistance. There is, however, rather wide acceptance in Europe of the idea that Europe should do more. Many proposals have been put forward for national or international action. Jean Monnet's Action Committee for the United States of Europe has proposed that the European Economic Community make a major effort to determine what kind of aid it can best give the underdeveloped countries. All phases of Europe's future role in economic development are widely discussed on the Continent today.

The United States government has made a concrete proposal. Building on a suggestion by Senator Monroney that originally stressed the increased use of accumulations of local currencies, the State Department and the Treasury have produced a plan that would draw a certain amount of European capital into an International Development Association. The funds would be used largely to make "soft loans," supplementing the work of the International Bank for Reconstruction and Development, which would supervise the IDA. Acceptance of this

proposal would still leave room for an additional flow of European capital into development work through other channels. While there are many serious questions about the forms and methods of development aid, for the theme of this paper the significance of the IDA Proposal and of the less-advanced plans being discussed in Europe is that they clearly recognize that Western Europe can now play a larger part than before in aiding economic development throughout the free world.

When one has said that Western Europe needs little economic aid and can, in fact, provide more help to the rest of the world, a troublesome question inevitably arises about military aid. It is a sign of how much the times have changed since 1949 that it should be difficulties in the United States balance of payments that have brought this issue to the fore.

Throughout the '50s the United States has had a deficit in its balance of payments. That is to say, we have provided more gold and dollars to the rest of the world than we have taken in. This was a necessary condition if other countries, and especially those of Europe, were to build their reserves at the rate they did. The United States and the whole free world economy benefitted by this. In 1958 the gold loss became much heavier than it had ever been. There are different ways of explaining why this was so which are not of great moment for present purposes. The important questions concern what the United States should do if heavy gold losses continue. They may not, even without governmental action. Exports are likely to rise, as businessmen set out to meet the foreign competition that has appeared and as foreign barriers to dollar sales disappear in the wake of convertibility. European repayment on past debts to the United States can be expected to increase. The course of American interest rates may bring more European capital here. All this may suffice to right the situation. Or the problem may continue.

There is an impressive area of agreement among economists that the prospect is not alarming and that drastic action is not called for but that the gold drain is a signal that it would be wise to prepare steps to restore equilibrium in the balance of payments.* Devaluation, deflation, or raising the price of gold are not called for. They are out of all proportion to the problems and would have undesirable effects in a number of fields. The search should be for smaller steps that can be taken gradually.

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* Statement of Charles P. Kindleberger before the Joint Economic Committee, [unpublished excerpt from] Hearings on International Aspects of Employment, Growth and Price Levels, June 30, 1959 (mimeographed); Edward M. Bernstein, International Position of the U.S. Dollar (New York: Model, Roland & Stone, [1959]); Randall Hinshaw, "Implications of the Shift in the U.S. Balance of Paymets," American Economic Review (May 1959), Bapers and Proceedings volume, pp. 274-283; and "The Dollar," National Institute Economic Review, National Institute of Economics and Social Research (London), (March 1959), pp. 16-25.

Charles Kindleberger has rightly pointed out that "it is inaccurate to say that change in one item in the balance of payments has brought about the change in another: all the items are interdependent and mutually determine one another."* Yet if action is called for, there are some obvious targets. The case for curtailing imports on balance of payments grounds is poor. Efforts to discourage private foreign investment would be of dubious wisdom and would comport oddly with the efforts we have made to encourage it. To reduce development aid at the present stage makes little sense. The importance of Europe as an area for American military spending coupled with the great rise in European reserves inevitably focuses attention on the possibility of shifting an additional part of the cost of European defense to European governments. One of the most pointed analyses of the United States balance of payments position arrives explicitly at that conclusion.

> ... The industrial countries of Western Europe ... do not need all of the $3.4 billion of transfers and payments (military expenditures, grants of military supplies, other grants, and U.S. Government net capital outflow) that the U.S. Government made to them and for them in 1958.
>
> ... Since 1952, the U.S. policy has been to continue U.S. aid and expenditure, largely for military purposes, while the rest of the world restored an adequate level of reserves. The new U.S. policy should be one of greatly reduced aid and expenditures for Western Europe, larger U.S. and European aid for underdeveloped countries, and a moderate growth of reserves for all the great trading countries. **

The bulk of the payments to which Bernstein refers concern military activities. In 1958 the United States made grants of military goods and services to Western Europe totaling $1.5 billion dollars. This was about three-fifths of all the military grant aid provided by this country. The provision of end items and services from the United States contributes directly to the balance of payments deficit only if it is assumed that in the absence of aid the foreign countries would pay for these goods and services. When the weapons and equipment are bought abroad, however, dollars find their way into the central bank of the producing country (which may also be the country receiving the aid). Of equal importance is the money the United States spends in Western Europe to support its military establishment there. This came to about $1.7 billion in 1958. These transactions, too, provide "free" dollars. Their distribution depends not on the need of

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* Kindleberger, cited, p. 2.

** Bernstein, cited, p. 8.

particular countries but on the deployment of U.S. troops and installations. Thus Germany, a country with a healthy balance of payments, received in 1958 about $750 million for "services rendered to foreign military agencies" of the dollar countries, a sum equalling nearly two-thirds its exports of goods to those countries.* The sums are large and if adjustments could be made in them, this would be a promising means of meeting an emerging balance of payments problem for the United States.

Whether American military aid and military expenditures in Western Europe ought to be reduced is not a matter that can be judged by an economic calculus alone. The willingness of the United States to provide one or another kind of aid undoubtedly has something to do with the character of NATO's defense posture. Military aid is often called the "cement" of the alliance, and no one would wish to diminish the quality of that cement. The Draper Committee has judged the matter important enough to call for an increase in appropriations to keep future military aid to NATO countries at something like the present level.

Of course there is nothing in this line of argument that implies that there should be any reduction in military strength; the considerations advanced by Bernstein and others apply only to the sharing of the burden. As the NATO experience has shown, burden sharing is too complex and tricky a matter to be settled by formula.** More than balances of payments are involved. Arguments among allies about equality of sacrifice, relative standards of living, and similar matters are not likely to be edifying. Behind the visible items of aid and American military expenditures abroad lie questions about the amount of the domestic United States military budget that can in some sense be attributed to the defense of Europe, about Britain's overseas commitments, France's costs in Algeria, the pay of Turkish soldiers, and the pricing practices of the United States military establishment when it turns over weapons to an ally under a military grant. In complex economies like those of the United States and Western Europe there are myriad ways of shifting and spreading burdens and of adjusting to change. The most apparent division of costs is not always the real one. Yet somehow the burden must be shared. Negotiation, national action, the available funds, past practice and a rough sense of justice probably determine its pattern. What this analysis of the new situation suggests is only that in future burden-sharing it may be necessary to give more consideration than in the past to the condition of the U.S. balance of payments and the improvement of Europe's economic power. One

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* "The Regional Breakdown of the Balance of Payments in 1958," Monthly Report of the Deutsche Bundesbank, June 1959, p. 29.

** Ben T. Moore, NATO and the Future of Europe (New York: Harper for the Council on Foreign Relations, 1958), pp. 90, 91, 96-99.

must, however, go well beyond the confines of this paper to make an intelligent choice between shifting the military burden and some other course if an adjustment of the balance of payments proves necessary.

V.

The second set of consequences flows from convertibility and from the assumption that dollar shortage is not endemic to the free world economy. "Equal treatment" in international trade -- and therefore no discrimination in exchange controls -- was a key principle of the policies with which the United States emerged from the war. It was central to the design of a world economy that Washington was fostering and was embodied in the Bretton Woods Agreements, in GATT, in the Charter for the ITO that failed, and in bilateral trade agreements and commercial treaties. During the postwar period we have not, in fact, applied this principle to most of our trade with Europe. Because dollars were "scarce" and the countries of Europe were in balance of payments difficulties -- both shorthand expressions for complexes of problems -- the United States has acquiesced in extensive discrimination against dollar goods. Some of this was provided for by escape clauses in GATT and the Fund articles, some consisted mainly in the United States' not pressing its rights. American encouragement of economic cooperation among the countries of Western Europe added to the willingness to accept discrimination, so that they could give preference to trade among themselves. In pursuit of these policies the United States also accepted the virtual nullification, for the time being, of many of the tariff concessions made to it by European countries.

Convertibility marks the end of this period by removing the justification for discrimination on balance of payments grounds. This did not happen all of a sudden. The improvement of most European countries' balances of payments before convertibility has been accompanied by a reasonable amount of liberalization of dollar trade. But by registering the fundamental change, convertibility established the premise for more sweeping action.

The United States government has made its expectations clear. W.T.M. Beale, Chairman of the United States Delegation to the GATT session of last May, put matters clearly and forcefully.

> The United States considers that the advent of convertibility has refuted whatever financial logic may have been found in trade discrimination. Convertibility should mean the rapid removal of the inequalities that have proved costly both to the countries whose export interests have felt the sharper edge of import restrictions and to the countries which have considered it necessary to apply import restrictions in a discriminatory way. May I repeat what the United States delegations to the meetings of the Contracting Parties have said many times: All import restrictions carry some economic cost, but

> discriminatory import restrictions are likely to be especially costly since they tend to divert from cheap sources to expensive ones the purchase of whatever volume of imports is permitted. Countries with the greatest need for foreign exchange -- including the less developed countries, a number of which continue to have overall balance-of-payments difficulties -- are least able to afford the extra costs that discriminatory import restrictions entail. *

He added a note of appreciation for "the quick action taken by a number of countries ...." Since then more has been done. There will undoubtedly be some difficult points. Because convertibility is still "non-resident," transactions within the sterling area and the franc area remain on a basis that entails some discrimination against imports from other countries -- but not only dollar imports.

There is a larger significance implicit in these developments. For one thing they mark an escape from the risk that preferential trade and payments arrangements within the European soft-currency area would tend to perpetuate themselves, inhibiting progress toward a global extension of non-discrimination and perhaps making Europe a high-cost area.** Instead, they show that regional cooperation can be made a step on the way toward broader liberalization, and that temporary shelter can, at least sometimes, be used to make further shelter unnecessary. The initial progress in ending dollar discrimination is also, incidentally, a testimonial to the usefulness of commitments to global policies even if they are long held in suspense.

The new steps undoubtedly involve some loosening of European monetary cooperation. Whether they will be succeeded by closer coordination among national monetary authorities -- not necessarily entailing discrimination -- or by the development of new financial machinery within the European Economic Community, remains to be seen.*** For the present the move to convertibility gives new importance to global -- or at least free-world-wide -- economic arrangements built on principles very much like those propagated from Washington when the war ended. In recent years the International Monetary Fund has been

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* "Trade Discrimination and Currency Convertibility," The Department of State Bulletin, July 20, 1959, p. 97.

** For an examination of these possibilities, see my Trade and Payments in Western Europe (New York: Harper for the Council on Foreign Relations, 1952), Chap. 27.

*** Triffin, "Tomorrow's Convertibility ...," cited, makes a number of proposals for new measures.

working in the way it was originally intended to work, after a rather long period in which it was in the doldrums, not by its own fault, but, it seemed, by its nature, because it was made for a different kind of world. The strengthening of the Fund, both by its increased activity and by the enlargement of its resources, seems very much in tune with the new turn in the world economy just as the creation of the European Payments Union responded to the prevailing conditions of a decade ago. In monetary affairs at least, the gravamen has shifted from regional to global action.

VI.

In trade, matters are somewhat different. The return to convertibility coincided closely with the first cut in tariffs and enlargement of quotas called for by the Treaty of Rome establishing the European Economic Community. With this, six continental countries started on a course intended to lead them to a customs union, something William L. Clayton and his team of "friendly advisers" recommended for the whole group of Western European countries when the Committee of European Economic Cooperation was preparing the European response to Secretary Marshall's offer in the summer of 1947. Thus, there is still another set of new assumptions for American policy toward Europe. There are also, however, some important open questions about what will happen next in Europe's trading relations and what policies the United States should pursue.

Between the first steps that have been taken and the completion of the customs union called for by the common market treaty lie many obstacles. There are also, however, some rather impressive indications of the extent to which that goal is widely accepted. An important one is the speed with which European businessmen seem to be arranging their affairs so as to be able to carry on without the conventional trade barriers. Considering the gradualness with which tariffs are coming down, the response seems to be outrunning the stimulus and it is conceivable that the customs union will largely take shape sooner rather than later than the treaty calls for. There will undoubtedly be difficult spots and places where progress will lag. Interested parties will fight more or less effective rearguard actions. Serious recession or even a fairly long period of stagnation could upset the whole timetable. On the whole, however, it seems best to assume that the common market will become a reality during the next decade or decade and a half, at least so far as concerns the removal of internal tariffs and the adoption of a common tariff on imports from outside the area.

This still leaves many issues unsettled. How much competition there will be within the common market and how much cartelization and concentrated control is not easy to foresee. Much depends not only on

the way the treaty's rather general provisions on these matters are administered, but also on national action concerning cartels and concentrations and on the appearance of entrepreneurs who in fact want to compete. Without these last the public authorities can have only a limited influence. Agriculture is another uncertainty. Several different courses of action seem possible under the treaty, some of which would certainly not be liberalizing in any significant sense and some which risk raising costs in some of the common market countries by spreading to them the burdens of agrarian protectionism in others. Transportation presents many problems. For some goods transport costs and discriminatory rates are comparable in importance to national trade barriers. The treaty provisions are rather general; the obstacles to a rationalized transport system are quite strong.* One must also be skeptical about how much free movement of labor is likely to result from the Treaty. On the other hand, the search for an effective energy policy may provide a basis for closer cooperation. Euratom in its own limited field also has reasonably good prospects of working effectively.

In short, the grounds are not good for predicting how far the six countries will go in transforming their customs union, which seems likely to be created, into an economic union. Perhaps the crucial area is money and finance. There are strong pressures in the common market towards at least a high degree of coordination of financial policy and general economic policy. There are many people who strongly advocate major steps in this field. There is, however, a fundamental obstacle. So long as political power and responsibility are organized primarily on national lines there are limits to how much economic sovereignty can be yielded, either to some kind of supranational body or through commitments to intergovernmental action that could deprive the government of the ability to meet major domestic difficulties or to carry out the general lines of policy that seem necessary in discharging the comprehensive responsibilities that are now regarded as normal for governments. Of course, the power of governments to do these things is already limited by the facts and that is one of the forces making for cooperation and integration. The sovereignty that is "given up" is not always power that can in fact be used effectively to ensure economic stability and growth. The interplay of these two considerations, and the forces they give rise to, will play a decisive part in the development of the economic integration of Europe, whatever direction it takes.

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* One of the most important accomplishments of the European Coal and Steel Community was its improvement of transport conditions. Even so, it has not brought about wholly satisfactory arrangements. The accomplishments and the obstacles are discussed in my The Schuman Plan (New York: Praeger, for the Council on Foreign Relations, 1959), Chap. 8.

Somewhat analogous uncertainty surrounds the matter of supranational vs. intergovernmental organization of integration among the Six. The high water mark of supranationalism was the Schuman Plan Treaty. The defeat of EDC showed that the tide had turned. The common market treaty, as is frequently pointed out, puts more power in the hands of governments and intergovernmental agencies than in the supranational commission. The latter's powers are not negligible, though, and in favorable circumstances its influence could be much greater than the texts may suggest. If the common market treaty is compared not with the Coal and Steel Treaty but with the practice that has developed in the Coal and Steel Community, there is far less discrepancy. Though the High Authority has exercised supranational powers, sometimes against the will of governments or interest groups, the structure of government that has developed in the Coal and Steel Community is a mixed system in which national, supranational, intergovernmental, and private centers of power are all important and where persuasion and consent are more important than fiat and coercion.* A sharp reminder of this situation is the fact that the key action in the coal crisis was taken by the German and Belgian governments when it proved impossible to get intergovernmental agreement on effective measures and the High Authority lacked the power to impose drastic conditions. There is nothing suprising in all this and it seems reasonable to expect that some kind of mixed system will develop in the new Communities as well. Since the common market covers a wider range of economic activity and is regarded by its members as of major political importance as well, we can reasonably expect that the important shaping force in determining this balance will be the course of broader political relations among the members and especially between Paris and Bonn.

In its policies toward Europe in the years to come the United States has, therefore, to take account of a new unit at the core of the Continental economy. Though the probability seems high that the Community will develop into a customs unit, as planned, much of the rest of its character remains fluid and uncertain. The United States will often be concerned with the course the Community takes, either because of direct effects on American interests or because of the economic and political consequences for Europe. It is likely that the opportunities for the United States to influence the course of events will be rather limited. There will probably also be cases in which the United States could have an influence but would be better advised not to use it but to leave matters to the Europeans. There is, however, one segment of the Community's affairs in which there is a direct confrontation of the United States and the Six and a need to work out mutually satisfactory relations: the external trading arrangements of the Community.

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* The Schuman Plan, cited, sets this out in more detail, especially in Chap. 21.

Major negotiations will take place in GATT next year and the year after. Then the external tariff of the Community will be examined to see if it conforms to the requirements of GATT, which bind the Six, and negotiations about rates will take place in which concessions by this country could be traded for reductions in the new tariff. The impact of the Community's external tariff on American goods may be very important for some items, because from now on the United States exporters will be at a disadvantage in selling inside the common market when they are competing with products from any one of the six countries. More is involved in these negotiations, however. They can affect the character of the Community and the continuing relation of outsiders to the Community.

Inside the Community there are conflicting sets of forces, some making for a liberal, low-tariff area, trading heavily with the rest of the world, drawing the economic benefits from that course, permitting foreign competition to exercise its disciplinary force on the economy of the Six and keeping down costs. The contrary forces are all those that we traditionally call protectionist. They are abetted by the views that producers should be allowed to adjust to trade barriers among the Six before inviting more foreign competition, and by the feeling that the Community can best build up its independent economic strength by holding foreign producers at arm's length. There is not likely to be a clear victory for one or the other set of forces any more than there usually is inside countries. The GATT negotiations and other external relations may be able to influence the balance of these forces in a significant way, provided outsiders, including the United States, are in a position not only to argue but to offer advantageous trade bargains in return for reduction of the Community's tariff rates.

Other outsiders have interests similar to those of the United States. The Community's immediate European neighbors have the greatest stake but many overseas countries feel themselves acutely affected, even threatened, by what the Community does. Some of these are especially concerned about the relation that will develop between the Six and Africa, a matter too complex to go into here. Direct trade relations are also important to the overseas countries because Europe is one of the world's largest markets for raw materials and food. Japan has a special concern and so will the growing number of countries producing cheap manufactured goods. There is, thus, a certain convergence of forces in GATT that can be important in shaping the Community. It is also important that the countries outside Europe and North America should get reasonable satisfaction through GATT (or in other negotiations) if their links to the free world economy are to be strengthened.

GATT is also important as the principal link between European regional trading arrangements and a more or less world-wide set of trading principles. The dangers of preferential trading groups are

well known. Postwar Europe has shown their advantages. One of the means of checking the dangers and encouraging the advantages is to measure the regional performance by an external standard and to provide continuing confrontation of the interests of outsiders and those of the regional group. This GATT does. It lays down rules to which customs unions and free trade areas must conform and provides a forum for representatives and explanations when interest conflict. Whether the standards set out in GATT are the best is a matter for debate, but they are at least good attempts at approximating the main aims. GATT sessions proved useful as an external influence on some actions of the Coal and Steel Community.* This is not a matter of the rest of the world against the Six. The need to satisfy external standards strengthens the hand of liberal groups within the common market. In the future it may be quite important to European countries that this practice not only should be formally established but should have proved effective. During the next decade or two we are quite likely to see the formation of other regional groupings. The Community will be the outsider in these cases and may have a very real interest in reasonable external tariffs and the existence of a forum for discussing and testing the policies of the new groupings.

The free trade area -- taking that term to stand for the problem of establishing satisfactory relations between the Six and their immediate European neighbors -- is a much too complicated question to be analyzed effectively here.** Briefly, it would appear from reading the record of the negotiations, that if there is to be anything like the free trade area that seemed nearly agreed on in late 1958, three kinds of development are necessary. There must be a clarification of political implications and a removal of the obstacles this reveals. "Europeans" do not want the political significance of the common market diluted by the free trade area. They suspect the British of intending that. British political expectations are not clear but in the previous negotiations London appears to have underestimated the solidarity of the Six and especially of Paris and Bonn. A second development necessary to the negotiation of a free trade area is that French opposition to it be overcome. If the reforms of the end of 1958 continue to work they may remove that part of the opposition that is rooted in concern about exposing the national economy to broader areas of competition. How much this would reduce protectionist opposition or alter its political influence is less clear. Third, the British and the other nonmembers must make a better offer or enhance their bargaining power. The little free trade area of the seven does something to this and also

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* The Schuman Plan, cited, pp. 523-532.

** The best analysis of the negotiations is Miriam Camps, The Free Trade Area Negotiations (Princeton: Center of International Studies, Princeton University, February 10, 1959).

reduces the risk that Austria, Switzerland and Denmark, which have the largest commercial stakes, will be drawn off into separate negotiations with the Six. The exploration of means of drawing the Commonwealth countries into the negotiations or of linking imperial preference with the European system may turn up other possibilities. A fourth item that may be essential in reaching agreement on a free trade area is a satisfactory arrangement about Africa.

If negotiations are reopened and no agreement is reached on a comprehensive free trade area resembling that discussed last year, several other possibilities are open. A more limited agreement might subject certain crucial commodities to special treatment. There might be no general agreement but arrangements for continuing negotiation and consultation. The little free trade area might continue alongside the common market. There might be a certain parallelism of action by the two bodies as there has been in the opening stages. Many variations are possible within this range. The economic consequences of each alternative are a bit too hypothetical to be worked out here.

Failure to agree on a free trade area would pose the question of the effect of an economic split in Europe. It is not too hard to imagine Europe living with a split for some time, if this meant only that there were two trade groupings that had special internal relations but followed reasonable policies toward one another. Perhaps this is optimistic, considering the opportunities for friction and the conflicts of commercial interest that would be generated. How serious these are may depend on the impact of particular trade barriers and preferential margins. The common market's fairly gradual schedule of tariff changes may provide time to reach understandings, but the commercial effect of a split would depend to an important degree on what people expect the future pattern of European trading arrangements to be. The greatest danger is that, in bargaining or in coping with some internal problem, the blocs will so damage one another and provoke retaliation that a sort of economic warfare results. There is no reason to jump to the conclusion that any split in Europe means an ultimate split of this sort, especially since everyone seems quite conscious of the dangers of such a development. In each situation there are likely to be some in each bloc who in self-defense or out of good sense will counsel caution and hold back the hotheads.

One cannot derive very firm assumption for American policy from this uncertain and unpredictable aspect of Europe's new position. That the United States has an important interest in how the free trade area problem develops is clear. The most basic interest is to avoid a split in Europe because that could seriously damage not only Europe but the whole free world. It follows that the United States is concerned with the success of the European countries in aiming at an accommodation that is both acceptable and economically advantageous.

The United States should take the view and encourage it in others that the common market and some kind of free trade area ought not be looked at as alternatives, one of which must give way to the other, but as complementing measures, each of which serves a purpose the other cannot serve.

The United States also has an interest in the kind of free trade area that takes shape analogous to our interest in the external relations of the common market. If a true free trade area is created, GATT standards exist for testing it and the member countries, which will still control their own external tariffs, can be negotiated with in the ordinary fashion. However, if, as seems quite possible, something less than a "pure" free trade area is worked out, a series of rather difficult questions will arise. In either case the United States will be faced with an extension from the Community to a much larger area of the market in which its exports (and those of other non-members) are at a tariff disadvantage compared to goods produced in member countries. In the case of an "impure" or incomplete free trade area there will be less internal liberalization. Therefore the arguments as to why outsiders should accept this arrangement will be reduced, but the tariff disadvantage for certain American goods in certain markets will also be less. An incomplete free trade area will be open to some of the objections that have made the United States oppose preferential trading arrangements. Its dynamics and the direction in which it would develop are likely to depend on what is liberalized and what is not; in any case, they may be hard to determine. In weighing these considerations, the United States will also have to take account of whether compromises have to be accepted in order to avoid a split in Europe.

If a free trade area of some sort is formed, GATT will probably become the best focus for testing it against the interests of outside countries, as in the case of the common market. In the meantime, however, the United States is faced with the question whether it can usefully influence the course of events in Europe that will shape the free trade area or lead to its rejection. Generalizations do not provide very useful answers to this question. One must be very close to the scene to see what opportunities there are for effective action. It is clear that the key decisions have to be worked out by the European governments but it may well be that the United States can play a more active part in the future than it has in the recent past.

The relation of the United States to Western European integration has undergone some major changes in the last fifteen years. Under the Marshall Plan the United States played an important part in helping Europeans to shape the liberalization of trade and payments. When the Schuman Plan Treaty was being negotiated, the United States played a crucial role in smoothing the way to final agreement by measures affecting German deconcentration. Before and after that, however, its role

in the affairs of the European Coal and Steel Community was quite secondary. The United States was deeply involved in the EDC negotiations. Their failure was widely regarded as demonstrating the limits of American power in Europe, so far as promoting integration was concerned. Thereafter, though the United States continued to champion European integration, it followed a much less active policy. It played a very minor role in the new process of integration that started at Messina and led to the common market and Euratom. American willingness to aid Euratom has, however, been crucial to the work of that agency.

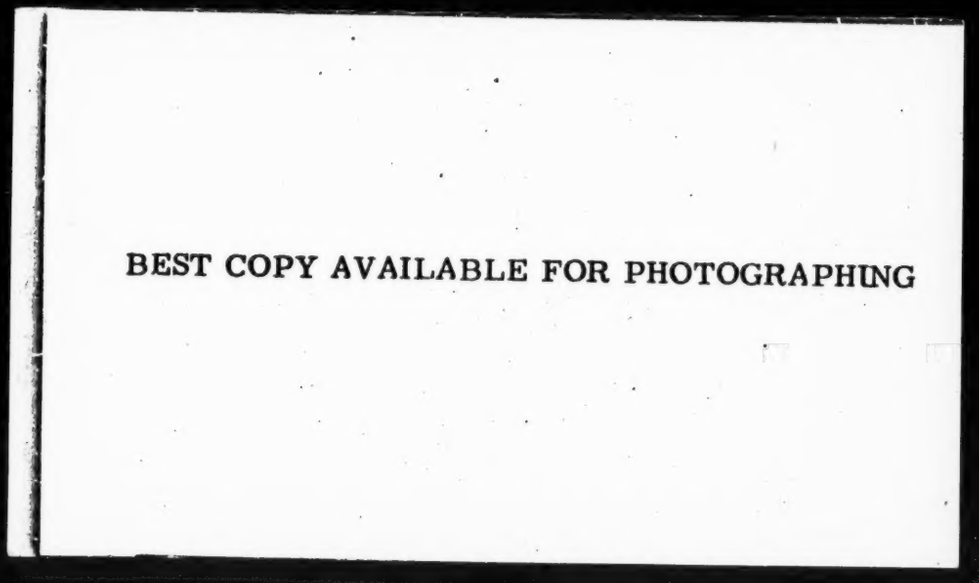
As the foregoing pages have indicated, a new phase seems to have opened. With regard to the relations of the common market to the rest of Europe -- the free trade area question -- the United States is concerned to promote a further degree of integration without destroying what has already been achieved. So far as the common market itself is concerned, the integration process seems well in hand. The emphasis of United States policy now shifts to the relation of this regional measure to the rest of the free world trading structure. What the United States can usefully do about the free trade area problem needs further exploration. The means of meeting the common market problem largely lie at hand in GATT. The effectiveness of American action in this case, and perhaps to a considerable extent in the former as well, will depend very largely on trade policy and especially tariff bargaining. These have now taken the central place as the main instruments of American economic policy toward Europe.

VIII.

This examination of the changed position of Europe and its consequences for American economic policy toward that area has said nothing about the place of NATO in economic affairs. These matters have been thoroughly examined in the past and a brief survey could add little to them. So far as I can see, NATO's role in economic policy can best be left what has been a rather limited one. There is certainly room for more consultation about economic policies by which members of NATO hurt each other. The recollection that we are allies can be a useful solvent for some economic difficulties. There would be economic advantages in more coordination of military production and its ancillaries. The kind of "defense economics" that are so important in the United States and in some other countries as well ought to be more rigorously examined in relation to NATO. But all this depends on some very firm assumptions about the permanence of the alliance, the character of its strategy, and the interests of NATO members outside the Atlantic area.

When it comes to broader economic questions, the inappropriateness of NATO as an economic institution is as apparent as always. The criterion of membership has nothing to do with the criteria appropriate for most economic grouping. The political objections to organizing foreign aid through NATO are well known. The organization of trade and finance along NATO lines makes no particular sense; the effort to have a meaningful NATO grouping within larger economic organizations is likely to cause more difficulties than it removes. The NATO countries are concerned with the whole free world economy. It seems quite clear that they can make their best contribution to its health by other means. If the time comes when Western Europe and North America seem ready to think seriously about some sort of economic union, the advantages of that course can be explained. The constant question is likely to be, if you can go that far, why not go farther and include countries that are not Atlantic but that are ready for economic integration.

Meanwhile, the economic core of NATO is the state of the American and European economies, their relations to one another, and their place in the world. A major advance has been made during the last decade in the transformation of Europe from a weak spot to a main center of strength. This has altered the kind of policies that the United States needs to follow toward Europe and Europe toward the United States. There are some difficulties in the new relationship and new problems will appear. There are also some major new opportunities. Some of these center on the removal of the shelters the European economy needed in the past. Even more important are the opportunities for Western Europe to play a much fuller role in improving the operation of the free world economy. These matters all come to focus in the problem of finding the way to relate a new degree of Western European economic regionalism to the requirements of a larger multilateralism.


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WHY THE GOVERNMENT BUDGET IS TOO SMALL IN A DEMOCRACY

Introduction

In a democratic society, the division of resources between the public and private sectors is roughly determined by the desires of the electorate. But because political information is costly, the electorate is chronically ignorant of the costs and benefits of many actual and potential government policies. It is my belief that this ignorance causes governments to enact budgets smaller than the ones they would enact if the electorate possessed complete information. Yet these under-sized budgets stem from rational behavior by both the government and the electorate; hence they are extremely difficult to remedy. Furthermore, the resulting misallocation of resources becomes more and more serious as the economy grows more complex.

As proof of these assertions, the following topics will be discussed: (1) how the budget is determined in a democracy, (2) the nature of rational political ignorance, (3) the definition of "correct" and "incorrect" budgets, (4) how an "incorrect" budget might arise, (5) significant differences between transactions in the public and private sectors, (6) distortions in budget evaluation arising from these differences, (7) a counter-tendency towards over-expenditure, (8) the net results, and (9) the increasing importance of the problem.

I. How the Budget is Determined in a Democracy

According to the economic theory of democracy, each government sets both expenditures and revenue-collection so as to maximize its chances of winning the next election.[1] This follows from the axiom that political parties are primarily motivated by the desire to enjoy the income, prestige, and power of being in office. Each party regards government policies as means to these ends; hence it pursues whatever policies it believes will gain it the political support necessary to

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[1] See Anthony Downs, An Economic Theory of Democracy (Harpers, 1957) for a complete explanation of this theory. The government budget is discussed in Chapter 4.

defeat its opponents. Since expenditures and taxes are two of the principal policies of government, they are set so as to maximize political support. Out of this rational calculation by the governing party comes the budget.

Rationality likewise prevails among voters. They vote for whichever party has policies they believe will benefit them more than those of any other party.[2] These "benefits" need not be conceived in a narrowly selfish sense, but consist of any utility they derive from government acts, including acts which economically penalize them to help others.

The budget itself is not arrived at by considering overall spending versus overall taxation, but is the sum of a series of separate policy decisions. The governing party looks at every possible expenditure and tries to decide whether making it would gain more votes than financing it would lose. This does not mean that each spending bill is tied to a particular revenue bill. Instead all proposed expenditures are arranged in descending order of their vote-gain potential, and all proposed revenue-collections arranged in ascending order of their vote-loss potential. Wherever these two marginal vote curves cross, a line is drawn that determines the overall budget. Expenditures with a higher vote-gain potential that the marginal ones are included in the budget, which is financed by revenue collection methods with lower vote-loss potentials than the marginal one.

It should be noted that the government never asks itself whether the overall budget is"too large" or "too small" in relation to the views of the electorate. In fact, it never mades any explicit decision about what the overall budget size should be, but determines that size merely by adding up all the items that more than pay for themselves in votes. Similarly, the voters do not evaluate a budget on the basis of its total size but by the particular benefits and costs it passes onto them.

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[2] The remainder of this paper assumes a two-party system. Its conclusions are also applicable to multi-party systems, but the corresponding proofs are too complicated to be presented in a paper of this length.

The absence of any specific evaluation of overall budget size appears to make our original assertion meaningless. How can we say the government budgets are too small when no one ever considers their size in judging them? The answer is that ignorance produces biases in the electorate that cause the government to exclude certain acts from the budget, thus reducing its size from what it "should be." Our original thesis can be more accurately stated as follows: rational ignorance among the citizenry leads governments to omit certain specific types of expenditures from their budgets which would be there if citizens were not ignorant. The fact that this results in budgets that are too small is simply a dramatic way of stressing the outcome.

II. Rational Political Ignorance

In this model, information is a crucial factor. In order to form policies, each party must know what the citizenry wants; and in order to vote rationally, each voter must know what policies the government and its opponents espouse. But in the real world, information is costly--if not in money, at least in time. It takes time to inform yourself about government policy. Furthermore, the number of policies that a modern government has to carry out is vast and their nature astoundingly complex. Even if the world's most brilliant man spent 24 hours a day reading newspapers and journals, he would be unable to keep himself wellinformed about all aspects of these policies.

In addition to facing this problem, the average voter knows that no matter how he votes, there are so many other voters that his decision is unlikely to affect the outcome. This does not always prevent him from voting, because he realizes voting is essential to democracy and because it costs so little But it usually does prevent him from becoming well-informed. Beyond the free information he picks up by just being alive in our media-saturated world, he does not see how acquiring detailed political data will make him better off. Thus a rationally calculating attitude about the use of time leads him to political ignorance. This conclusion is borne out by countless polls that show just how ignorant the average citizen is about major political questions of the day.

In this article we discuss three specific states of rational ignorance. The first is zero ignorance; i.e., perfect knowledge. In this state, citizens know (1) all actual or potential items in the budget of each party and (2) the full benefits and costs of each item. The second state is partial ignorance, in which voters know all theactual or potential items in the budget, but not all the benefits and costs attached to each item. Their political perception threshhold has been raised so that remote or extremely complex events do not cross it, though the budget itself still does. The third state is preponderant ignorance, in which citizens are ignorant of both the items in the budget and their benefits they and costs. In this state, citizens' perception threshholds are so high that they are aware of only the individual policies or items in the budget that vitally affect them.

III. "Correct" and "Incorrect" Budgets

My contention is that rational ignorance acts so as to produce an "incorrect" government budget. But what is meant by the term "incorrect" when the government does not seek to maximize welfare? Since I posit no social utility function, how can I say that one budget is "better" or "worse" than another except in terms of its vote-getting power? My answer is that the "correct" budget is the one which would emerge from the democratic process if both citizens and parties had perfect information about both actual and potential government policies. Insofar as an actual budget deviates from the "correct" budget, it is "incorrect." Admittedly, no one has perfect information; hence no one can say what budget would exist if there were no rational ignorance in politics. This fact prohibits use of the "correct" budget for detailed criticism of actual budgets, but it does not prevent generalizations about the tendency of actual budgets to deviate from "correct" budgets because of broad social factors like rational ignorance.

There is no point in denying that the terms "correct" and "incorrect" are ethical judgments. They presuppose that it is good for the citizens in a democracy to get what they want, and to base their wants on as much knowledge as possible.

It is not good for them to get something they would not want if they knew more about it. That is the extent of my ethical foundation, and I think it is compatible with almost every normative theory of democracy.

IV. How an "Incorrect" Budget Might Occur

In a two-party democracy like ours, each national election can be considered a contest between two prospective government budgets. These budgets differ from each other in both quality and quantity, but each contains any spending and taxing measures about which there is strong majority consensus. In reality, many factors besides budgets influence people's political choices. However, most of these factors are in some way reflected in the budget, and in the rational world of economic theory, we can assume that proposed budgets have a decisive role in determining how people vote. Knowing this, each party carefully plans its budget so as to maximize the support it gets, following the procedure described in Section I.

A key feature of this procedure is that the government gives voters what they want, not necessarily what benefits them. As long as citizens know what benefits them, there should be no difference between the actual budget and the "correct" budget. But if there are benefits which government spending would produce that people are not aware of, the government will not spend money to produce them unless it believes it can make them well-known before the next election. For the government is primarily interested in people's votes, not their welfare, and it will not increase their welfare if doing so would cost it votes. And it would lose votes if it increased taxes or inflation--which people are aware of--in order to produce benefits which people are not aware of. Many citizens would shift their votes to some other party that produced only more tangible benefits at less total cost--even if they would in fact be worse--off under this party.

Thus if voters are unaware of the potential benefits of certain types of government spending, party competition may force the actual budget to become smaller than the "correct" budget. This outcome may result even if voters merely discount certain classes of government benefits more heavily than comparable private benefits

when in reality they are equal. Thus complete ignorance of benefits is not necessary to cause a "too-small" budget--only relative unawareness of certain government benefits in relation to their cost, which under full employment consists of sacrificed private benefits.

Conversely, if citizens are less aware of certain private benefits than they are of government benefits, or if they see benefits more clearly than costs, the actual budget may tend to exceed the "correct" budget. In either case, ignorance causes a distorted evaluation of the relative benefits of public and private spending. This distortion is carried over into the budget by inter-partycompetition, which forces each party to give voters what they want--not ncessarily what the parties think would benefitsthem. Thus the ignorance of the voters may cause the actual budget to deviate from the "correct" budget.

Whether the actual budget is too large or too small depends upon the specific forms of ignorance present in the electorate. Since ignorance influences voters' thinking by distorting their evaluation ofpublic vs. private spending, we must study the way citizens view these two types of spending before analyzing the net impact of ignorance upon the budget.

V. Significant Differences between Transactions in the Public and Private Sectors

There are two significant differences between transactions in the private sector and those in the public sector that are relevant to our analysis. First, in the private sector nearly all transactions are made on a quid pro quo basis; whereas in the public sector, benefits are usually divorced from the revenues that make them possible. Whenever a citizen receives a private benefit, he pays for it directly and individually. Conversely, whenever he pays someone in the private sector, he receives a corresponding benefit which he has freely chosen because he wants it. No such direct link between costs and benefits exists in the public sector. Taxes are not allocated to individuals on the basis of government benefits received but on some other basis, usually ability to pay. Thus receipt of a given benefit may have no connection whatever with payment for it. And when a man pays his income

or sales tax on his new car, he cannot link these acts of sacrifice to specific benefits received. This divorce of benefits from payment for them makes it difficult to weigh the costs and benefits of a given act and decide whether or not it is worthwhile, as can be done regarding almost every private transaction.

There are two reasons why governments do not operate on a quid-pro-quo basis. First, the collective nature of many government benefits makes it technically impossible. For example, take national defense. It is the largest single item of government spending, accounting for over 40% of the budget of all governments.[3] But the benefits of national defense are collective in nature; that is, if they exist for one man, all men enjoy them. This fact makes quid-pro-quo transactions impossible, because once the benefit exists, enjoyment of it cannot be denied to those citizens who have not paid for it. For this reason, voluntary payment cannot be used to finance collective benefits. Since each citizen benefits whether or not he has paid, he maximizes his income by dodging his share of the cost. But everyone has this cost-minimizing attitude; so if voluntary payment is relied upon, no one pays. Consequently the resources necessary to provide the collective good are not provided, and no one receives any benefits. To avoid this outcome, individuals agree to coerce each other into payment through a collective agency like the government.

A second reason why governments do not use quid-pro-quo transactions is their desire to redistribute income. In the private sector, benefits are furnished only to those who can pay for them, or through voluntary charitable activities. But most modern democracies have elected to provide their poorest citizens with more benefits than they pay for, and their richer brethern are forced to give up more in taxes than is spent on benefits for them. One way to accomplish such redistribution and at the same time allocate the costs of collective goods is to tax on the basis of ability to pay. Thus for both technical and ethical reasons, the benefit principle that prevails in the private sector is largely abandoned in the public sector.

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[3] This figure applies to 1954 and is taken from the Statistical Abstract of the United States: 1956 (U.S. Department of Commerce), p. 401

The second major difference between transactions in the private and public sectors is the coercive nature of dealings in the latter. Whereas all private transactions are voluntary, most payments to governments--other than direct sales of services--are enforced by law. Even the receipt of collective benefits is involuntary, since they exist whether a given citizen wants them or not. As noted, coercion is necessary because there is no intrinsic link between benefits and payments as in the private sector. Instead, force supplies this link.

But the use of force makes doing business with the government anall-or-nothing proposition. In the private sector, a citizen can enter into those transactions he desires and refrain from those he does not desire. No such selectivity is possible in his dealings with government. He must pay taxes which are used to pay for many projects he does not want. True, he can avoid taxes to some extent by directing his activities into untaxed areas; e.g., by refusing to buy luxury goods or cutting down the time he works. He can also exercise similar limited selectivity in receiving government benefits. But by and large, since his payments to government are not related to the benefits he receives from it, he finds himself contributing to things that do not benefit him. The result is that no one ever attains marginal equilibrium in his dealings with governments.

For a givencitizen, such equilibrium exists when the utility produced by that act of government which is least attractive to him (i.e., the "last" government act on his preference scale) is equal to the utility of the least attractive act he undertakes in the private sector (i.e., the "last" completed private act on his preference scale). Furthermore, there must be no additional government acts that would give him more utility than those now being carried out. Under these circumstances, the individual cannot be made better off by shifting resources from the private to the public sector or vice-versa, nor by any reallocation of resources within the public sector. (We assume he has already allocated his resources within the private sector to his maximum benefit.) This situation corresponds to equilibrium within the private sector as portrayed by classical economists--a state attained by utility-maximizers in a world of perfect competition.

However, even if perfect competition exists, the requirements for attaining perfect equilibrium with a democratic government are highly restrictive. If a majority of citizens have identical preference rankings of both public and private acts, then the government's actual policies will be just what those citizens want (assuming the government knows what their preference rankings are). The division of resources between public and private sectors will be precisely that necessaryto assure the majority a state of equilibrium between the sectors.

But in the real world, people's preference rankings are not identical, so we shall not assume them identical in our model. Whereas almost every man agrees with a majority of others in regard to some policies, he also finds himself in a minority regarding others. It is the presence of these "revolving majorities" that prevents men from attaining equilibrium with governments. The government must carry out a complex mixture of many policies, some pleasing to one majority, some pleasing to another majority, and some pleasing only to a minority with intensive feelings concerning them. It can afford to undertake policies favored only by a minority because it does not stand or fall on any one issue but on the mixture as a whole.[4] If society is at all complex, the government's gigantic policy mix is bound to contain at least one act which any given voter opposes. It is either positively repugnant to him (i.e., it produces negative utility apart from its resource-cost), or else he knows of better uses to which the resources it absorbs could be put. As long as only one such act exists for him, he is out of equilibrium with government. Even if we assume declining marginal utility of income in both private and public sectors, there is always some additional private use of resources (including charity) which would yeild him positive utility. There may also be other government acts, not now being performed, which would yield him even more utility than the best private act he can think of. Hence his disequilibrium does not nemessarily imply a desire for shifting resources from the public to the private sector. It may also imply desire for reallocation within the public sector or even for moving more

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[4] Where the government does stand or fall on every issue, as in the French Fourth Republic, it can function successfully only if strong consensus exists among the majority. Otherwise it is continually defeated by "Arrow problems." See Downs, op. cit., Chapter 1

resources into that sector. But in any case, there is always some change in government policy that would benefit him. Furthermore, the government is always spending money on projects he dislikes; hence his welfare would be improved if those projects were eliminiated and his taxes reduced. Therefore every citizen believes that the government budget is too large in relation to the benefits he himself is deriving from it. Even if he feels the optimum budget would be much larger than the actual one, he believes the actual one could be profitably reduced "Through greater economy," i.e., elimination of projects from which he does not benefit.

But if everyone feels the government is spending too much money for the benefits produced, why don't political parties propose smaller budgets? How can budgets which everyone regards as too large keep winning elections? The answer lies in thenature of the "revolving majorities" discussed previously. According to the economic theory of democracy, governments never undertake any policies unless they expect to win votes (or at least not lose votes) by doing so. Hence for every citizen opposed to a given act, there are other citizens in favor of it. Elimination of that act would please the first but alienate the second. Looking at the whole complex of its acts between elections, the governing party feels that including this act gains more votes than excludin. The party can afford to offend some voters with this act because they are in the minority regarding it, their feelings against it are not as intensive as the feeling of those for it, some other acts will placate them, or some combination of these reasons. Since citizens' preferences are diverse, every man finds himself thus ignored by the government on some policy or other. Hence everyone believes the government is carrying out some unnecessary acts. But the government is still maximizing political support for itself, forwhat one man believes unnecessary is to someone else necessary enough to cause him to thank the government with his vote.

However, the resulting disequilibrium puts tremendous pressure on thegovernment to reduce the budget wherever it can. This means it will make only those expenditures which produce benefits that voters are aware of, for hidden benefits cannot influence votes. Thus the threat of competing parties prevents the government from giving citizens what is good for them unless they can be made aware of the benefits involved

before the next election. Only if a party has immense confidence in its ability to win the next election anyway is it free to produce such hidden benefits, no matter how important they are in the lives of the voters. The more "perfect" is the competition between parties, the more closely must the government follow popular opinion, and the more likely it is to include in its policies any errors in that opinion caused by ignorance.

VI. Distortions in Budget Evaluation Arising from These Differences

Having analyzed the relevant differences between transactions in the public and private sectors, we now turn to the distortions they produce in benefit-appraisal. Such distortions are of two main types: under-evaluation of government benefits in comparison with private benefits, and under-evaluation of government cost in comparison with private cost. In both cases, the distortion occurs in estimating the government's contribution or cost rather than that of the private sector. This is true because the quid-pro-quo relationship in the private sector makes accurate estimation of both costs and benefits almost universal. Of course, some private spending is speculative in nature; e.g., people may attend a play not knowing beforehand whether it will be worth the price of admission. But because each private transaction is voluntary, purely individual in nature, and based on quid-pro-quo relations, the persons making it usually know its benefits and costs in advance (except in cases of financial speculation). The absence of these qualities in public transactions gives rise to two major sources of error.

1. REMOTENESS. Benefits from many government actions are remote from those who received them, either in time, space, or comprehensibility. Economic aid to a distant nation may prevent a hostile revolution there and save millions of dollars and even the lives of American troops, but because the situation is so remote, the average citizen--living in rational political ignorance--will not realize he is benefiting at all. Almost every type of preventitive action, by its very nature, produces such hidden benefits. People are not impressed with their gains from water purification, regulation of food and drugs, safety control of airways, or the regulation of utility and transport prices

unless these actions fail to accomplish their ends. Then, perhaps for the first time, the absence of effective protection makes them aware of the benefits they were receiving when it was present.

In contrast, the immediate benefits of almost all private goods are heavily emphasized. In order to sell these goods on a voluntary basis, their producers must convince the public of their virtues. Thus consumers are subject to a continuous advertising barrage stressing the joys of private goods; whereas no comparable effort dramatizes the benefits they receive from government action. Even private goods with benefits of a remote nature, such as cemetery lots, are advertised in such a way as to make awareness of these benefits immediate.

Furthermore, much of the cost of remote government benefits is not equally remote. In the private sector, the quid-pro-quo balancing of costs and benefits is often attenuated by time-payment plans which magnify benefits in relation to costs. But in the public sector the opposite is true. The major source of federal government revenue--personal and corporate income taxes--must be computed by taxpayers on an annual basis. Even if these taxes are paid by installments, the fact that each taxpayer must sit down and figure out exactly how much he has paid each year makes this cost very real to him. His rational political ignorance does not insulate him equally from knowledge of government benefits and their costs, but tends to emphasize the latter.

In some cases, this asymmetry is reversed. Sales taxes which are passed onto consumers are not strongly felt by them because they are spread over time in a series of relatively small payments. But the intermediate agent--e.g., the retailer who collects the sales tax--does compute the total amount paid. True, he realizes that this cost is borne by his customers in the long run.[5] Nevertheless, both his short-run views and his ignorance tend toemphasize the government's acuisition of these resources rather than the benefits they eventually provide; hence this acquisition

[5] If competition is not perfect, he bears some of the cost himself. This fact strengthenes the argument that citizens are relatively aware of the sacrifices imposed upon them by taxes, even indirect ones.

takes on the elements of confiscation.

The confiscatory caste of taxation is an inevitable result of the divorce of costs from benefits and the remoteness of the latter. Whereas in quid-pro-quo transactions each yielding of resources is justified by immediate receipt of benefits, taxation appears to be outright seizure of privately-produced resources. It thus seems parasitic rather than self-supporting like other costs of production or consumption. True, a rational tax payer knows that he receives benefits in return for his taxes, but the remoteness of many such benefits removes the appearance of tit-for-tat balance that is present in private transactions.

In summary, a major portion of government benefits are remote in character compared with either taxes or private benefits. Since citizens are rationally ignorant of remote political events, they fail to realize all the government benefits they are receiving. However, they are well aware of a greater percentage of the taxes they pay and of the private benefits they are sacrificing, to pay them. Because of this imbalance, the governing party cannot spend as much money on producing remote benefits as their real value to the citizenry warrants. Every dollar raised by taxation (or inflation) costs votes which must be compensated for by votes won through spending. But when the spending produces benefits that are not appreciated by voters, no compensating votes are forthcoming. Hence such spending must be restricted, or else the competing party will gain an advantage by cutting its own (proposed) spending and charging the incumbents with "waste." True, if the incumbents can demonstrate to thevoters that this spending actually produces valid benefits, such charges will be harmless. But such demonstrations absorb resources themselves, especially since the nature of remote benefits makes them hard to document. And since the government is under constant pressure to cut expenditures, it cannot afford to use resources advertising the benefits of its policies. In this respect, it differs from private concerns, which must advertise in order to encourage voluntary purchase of their products. A striking example of this advertising asymmetry is in the field of electric power. Whereas private power corporations advertise both the virtues of their own product and the evils of public power, government utilities cannot even advertise their existence

for fear of being accused of wasting public funds.

The outcome is elimination from the budget of all expenditures that produce hidden benefits. Only if the benefits involved are necessary for the survival of democracy itself will the governing party risk losing votes by producing them and spending resources to justify its action. Even in this case, it tends to get by with the minimum possible amount because it fears charges of "waste" from its opponents.[6] Clearly, this situation causes government budgets to be smaller than they would be if voters were perfectly informed about all benefits and costs, however remote.

2. UNCERTAIN NATURE OF GOVERNMENT BENEFITS. Closely akin to remoteness is the uncertain nature of many government benefits compared with private ones. Since government must deal with factors affecting society as a whole, the problems it faces are much more complex than the problems facing individuals in their private lives. Many policies undertaken by governments are launched without either control or knowledge of exactly what their outcomes will be. This is particularly true in international relations or fields of rapid obsolescence, such as national defense. Here the future is so beset by unknowns that whether a given policy will produce benefits or penalties is often problematical, and appraisal of the expected value of benefits forthcoming is extremely difficult. In contrast, each citizen in his private life knows of many ways to invest resources which will give him immediate benefits. True, life is full of risks, and the future is unknown to individuals as well as governments. Nevertheless, each person faces a much simpler set of choices in his own life, with many fewer parameters, than does even a local government. Hence the returns from investing resources privately must be discounted much less than those from investing resources publicly.

This situation is not a result of rational political ignorance, but of the uncertainty inherent in any complex situation involving human action. Even the best informed government experts cannot predict the outcome of many of their policies. They have plenty of current information, but do not understand all the basic forces at work,

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6 This is not to deny that there is a great deal of actual waste in government which justly deserves censure. However, many political charges of "waste" are really attacks on production of genuine--but remote--benefits. These attacks are designed to capitalize on rational ignorance for political gain at the expense of the actual benefit of the citizenry.

and cannot predict the free choices of the men involved. This kind of ignorance cannot be removed by greater personal investment in political information.

Again, the outcome is a budget smaller than the "correct"one. Because voters are led by rational ignorance to under-value benefits from policies with uncertain outcomes, the government cannot count on gaining political support by spending money on these policies. But since it can count on losing support by raising the money, it tends to eschew such policies altogether.

VII. The Tendency towards Excessive Spending

Up to this point we have discussed two states of information in the electorate: perfect knowledge and partial ignorance. We have shown that when the latter prevails, costs of government action will appear more significant than benefits; so the actual budget will be smaller than the "correct" budget. However, there is also a third state of information: preponderant ignorance. In this state, citizens are ignorant of both the items in the budget and their benefits and costs. The budget that results when such ignorance predominates differs radically from those discussed previously: it tends to be larger than the correct size because of voters' ignorance of what items are in the budget.[7]

Government action affects each citizen in many ways, touching nearly all the functional "roles" he plays in society. Two important such roles are those of income-earner and consumer. As an income-earner, each citizen benefits when government spending increases the demand for the service he produces and when his taxes are reduced. He suffers when such spending is diminished or when his taxes increase. As a consumer, he suffers whenever government action increases the prices of the goods and services he buys and gains when it causes them to fall relative to his income.

Thus government action influences his welfare in both roles, but the two influences are not equally significant to him. Since almost every citizen receives nearly all his income from one source, any government act pertinent to that source is extremely

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[7] However, this is not the only distortion caused by preponderant ignorance. It also encompasses the previously-described tendency to create budgets that are too small because voters are ignorant of remote government benefits. The net effect of these two opposite forces is discussed in Section VIII.

important to him. In contrast, he spends his income on many products, each one of which absorbs a relatively small part of his total budget. Thus a government act which influences one of the products he consumes is nowhere near as vital to him as an act which influences the product he sells.[8] Under conditions of preponderant ignorance, this asymmetry means he is much more aware of government policies that affect him as an income-earner than he is of policies that affect him as a consumer.[9]

In order to maximize its political support, the government takes account of this situation in planning its budget. It realizes that two excellent ways to gain a citizen's support are to raise his income by giving him something for nothing or buying what he produces. In some cases, both can be combined in a single act, such as hiring workers to build a public swimming pool which they subsequently use free of charge. But in a society with a complex division of labor, each specific income-earning group is usually a small minority of the population. Therefore government acts designed to please such a group usually distribute benefits to a minority; whereas their costs are added to the general tax burden and spread over the majority. Each recipient of such a boon thus feels he is making a net gain, since his share of the taxes added to pay for this project is much smaller than the benefit he receives. But the government also provides similar projects benefiting other minorities to which he does not belong. The costs of these projects are likewise spread over all citizens--including him--so he winds up paying for other people's special benefits, just as they pay for his. Whether or not he makes a net gain from this process is a moot point.

However, he cannot expect the government to undertake only those special projects which benefit him. Since a majority of citizens would be net losers under such an arrangement, they would vote against it. In order to get them to help pay for acts which benefit him, the government must provide them with benefits for which he helps to pay.

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[8] Many citizens sell their time and labor rather than an objective product. They are therefore interested in policies which affect both (1) the sale of their labor and (2) the sale of the particular products their labor is used to create.

[9] The classic example of this asymmetry is the tariff. A few producers manage to get government to set protective tariffs at the expense of millions of consumers, even through politicians seek to maximize votes. This is possible because producers are much more intensely interested in their incomes than consumers are in the individual prices that face them. See Downs, op. cit., pp. 253-257.

Thus the government placates the majority who are exploited by a minority in one field by allowing them to be part of exploiting minorities in other fields.

In this process of "log-rolling", the citizens affected do not enter into direct bargains with each other. The only decision they face is which of the two competing budgets to vote for at each election. All the intervening trading of political support is done within the governing party, which knows that it must present the end result to the voters as a single package in competition with a similar package offered by its opponents. Eachvoter must then decide which budget provides him with the greatest difference between benefits received and costs imposed. If he receives many benefits from "special-interest" projects, he can expect his taxes to be swelled by the costs of similar projects benefiting other minorities, which the government must undertake to "buy off" the people who paid for his gains. Thus he might be better off if all minority benefits were eliminated and taxes lowered for everyone.

However, the question facing us is not whether budgets will include many or few minority-benefiting projects. It is whether the voters' ignorance of what is in the budget will cause governments to increase or decrease the number of such projects, thereby increasing or decreasing the budget as a whole.

As we have shown, when preponderant ignorance prevails, voters are most likely to be aware of those government policies which directly affect their sources of income. Hence they encourage government policies which raise the relative prices of the products they sell. But since any particular type of producer is in a minority in a complex society, these policies will be minority-benefiting policies. This is also true because such policies injure all buyers of theproduct, and buyers usually outnumber producers. Thus each citizen's perception threshhold is most likely to be crossed by minority-benefiting policies involving government spending that raise (or could raise) his income.

On the other hand, government policies that affect the prices of individual goods he consumes will not be as apparent or as significant to him as policies which affect the price of what he produces. But policies that raise his costs as a consumer also

benefit the citizens who produce what he consumes. It therefore appears that government can engage in specializedspending that benefits each type of producer without arousing the antagonism of consumers, especially since each consumer receives such benefits himself in his role as a producer. This situation tends to make the actual budget larger than the "correct" one.

However, this appearance is deceptive, for it ignores the cost side of the budget. When voters are preponderantly ignorant about the budget, they do not realize that special benefits are being provided to minorities to which they do not belong. But these benefits raise the general level of taxation, and voters are quite aware oftheir taxes since taxes affect them directly. Thus their knowledge of the budget is narrowed down to two major items: government policies directly affecting their sources of income, and those types of taxes which inherently call themselves to every citizen's attention (e.g., income taxes).

As noted, when any given minority gets special benefits from government spending, the minority's taxes are likely to go up much more than just their share of the cost of the benefits they receive. If the taxes that rise cannot be concealed from the citizenry, each minority may prefer to eschew its special benefits and vote for a budget which cuts out such benefits and reduces everyone's taxes. But if the taxes that rise are the type that are less likely to cross the citizens' perception threshhold (e.g., sales taxes), then each minority may vote for a budget which provides it with special benefits because its taxes do not appear to go up significantly.

Thus insofar as taxation can be concealed from the electorate, thegovernment budget will tend to be larger than the "correct" one. Voters will under-estimate the costs they are paying for special benefits received, and parties will build this bias into their budgets. However, this tendency does not eliminate thepreviously-discussed tendency towards a too-small budget. Under preponderant ignorance both forces act simultaneously; so the net outcome in terms of total budget size is ambiguous.

VIII. The Net Results

Nevertheless, I believe the actual budget will still be smaller than the "correct" budget because even indirect taxation is much more apparent than many remote government benefits. As noted previously, whoever collects indirect taxes is aware of their existance even if in the long run he does not bear them himself. He tends to look at them as expropriation by the government of resources he could collect himself, since by raising the price of his product, they reduce his sales and cause him short-run hardships. Furthermore, he attempts to placate his customers for his higher price by identifying that element of it caused by the tax--thus making them aware of it. And if this tax is significant enough to support substantial increases over the "correct" budget, it must irritate many such persons. For these reasons, it is difficult to increase taxation to support "hidden" special-projects without arousing opposition. True, policies like tariffs, which raise prices but do not increase taxes, can be used to provide minorities with hidden benefits, especially if the parties whose income-earning suffers are foreign citizens. But when a domestic appropriation of revenues is necessary to support a hidden subsidy, some voters are bound to complain. This fact necessarily limits the tendency for budgets to exceed the "correct" amount.

No such inherent brake limits the tendency for remote government benefits to be ignored. Since most remote benefits stem from preventitive action, no one feels any immediate loss when they are not forthcoming. Perhaps particular producers might increase their incomes if government adopted policies that produced remote benefits, but their voices are not as loud as those of the taxpayers injured by indirect taxes. In the first place, they are not suffering "expropriation" of actual private earnings but only loss of potential income, which is rationally less significant because it must be discounted for uncertainty. Second, they are usually few compared to the large number of voters who must be taxed if the budget is to be made larger than the "correct" size. Furthermore, the benefits of preventitive action in any given field are usually known only to experts in that field, since such knowledge implies the ability to predict

future events, which in turn demands familiarity with causal relations in the field. Whenever these experts are members of the government, they are primarily motivated to produce votes rather than benefits. But remote benefits cannot produce votes unless resources are spent to inform people about them--and voters are notoriously hard to inform about anything remote. Thus the experts who usually know most about such remote benefits are not strongly motivated to produce them--nor is anyone else.

For these reasons, the two opposite tendencies acting on the budget are not of equal strength. The forces which tend toenlarge budgets beyond the "correct" level are inherently limited; whereas those which tend to shrink it are not. Therefore I believe the budget will emerge smaller than its "correct" size.

Even if the net size of the actual budget in relation to its "correct" size is ambiguous, certain specific distortions in it (i.e., variations from the "correct" budget) can be expected to result from the twotendencies described. They are as follows:

1. Indirect taxes will be too large in relation to direct taxes.

   Corollary A: Governments which depend on direct taxation for the bulk of their financing will find it more difficult to balance their budgets than similar governments which depend upon indirect financing.

   Corollary B: Since the costs of inflationary finance are not as apparent as those of taxation, this method will be too frequently used to avoid increasing direct taxation.

2. Projects which benefit minorities will be awarded too large a share of the resources allocated to government.[10]

   Corollary A: Costs of projects benefiting all citizens will be distributed with too many loopholes allowing specific minorities to evade their "normal" share.

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[10] This conclusion and many of the ideas in Section VII were developed in discussion with Gordon Tullock, to whom I am much indebted.

Corollary B: Producers as a group will receive a disproportionate share of government spending and policy-protection in comparison with consumers.

3. Government policies which produce remote or problematical benefits will not be allocated as many resources as warranted by their true importance in comparison with policies producing immediate and tangible benefits.

All of these tendencies distort the budget that would prevail if people were perfectly informed. Yet being perfectly informed is impossible, and even being well-informed is irrational; hence ignorance is likely to prevail. Therefore these distortions will probably occur even though a majority would be better off if they were eliminated.

IX. The Increasing Importance of the Problem

As society grows more complex, the role of governmental action becomes relatively more significant. This conclusion applies to all levels of government--local, county, state, national, and international. It results from government's function as a preventer and settler of conflicts between men.[11] Increased social complexity means increased interdependence, which in turn creates more conflicts of interest. Hence the need for more and more regulation, control and intervention by government in all spheres of action, especially economic.

Social complexity is usually the result of an increasingly specialized division of labor, which also causes higher productivity. Thus societies tend to become richer as they grow more complex. In democracies, this increased wealth is usually distributed to all citizens--by no means equally, but in a generally rising living standards. As men become wealthier, their marginal economic desires shift from material necessities to luxuries and services. Freed from the need to direct all resources to private necessities, they can afford many collective benefits heretofore beyond their means. Thus the need for greater government action coincides with greater ability to pay for it.

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[11] This is not the sole function of government, but it is one of the most central ones.

However, ability to pay and desire to pay are not indentical. We have shown that in our model economic world, the citizens of a democracy are reluctant to yield their private resources to the government if the benefits to be gained thereby are at all remote from their everyday knowledge. This reluctance is not based on stupidity or irrationality, but on the ignorance in which the average citizen of a complex society is forced to live. He simply cannot afford to be well-informed about all the remote benefits of government action that are or might be important to him. And this ignorance influences the government to refrain from providing him with such benefits. The party in power fears losing to its opponents if it invests tangible resources in less tangible projects, even when it realizes those projects would benefit the citizenry.

Furthermore, as society grows more complex, the remoteness of possible government action increases. This tendency is most obvious in international affairs, where economic and technical progress have spread a web of interdependency over the whole world. It becomes harder and harder for even experts to keep well-informed on possible benefits to be gained from government policies, including those on the local scene. In short, society's complexity demands more government action, but it also makes each field of action more remote from the ken of the average man. Faced with a gigantic maze of government agencies, each grappling with incredibly intricate problems, a normal citizen soon concludes that keeping himself well-informed is hopeless. Therefore he wraps himself in a mantle of rational ignorance insulated from knowledge of increasingly important remote benefits by the increasingly high cost of finding out about them.

Thus as remote benefits become more important, they become less likely to be attained. Their greater importance is accompanied by still greater remoteness, and this makes governments more wary of devoting resources to them for fear of competition from opponents who advocate more immediate gains. The actual government budget shrinks to an ever-smaller percentage of the "correct" budget, even if it increases in size absolutely. Yet most people do not realize this increasing distortion because they are blanketed by an ignorance of political realities which becomes deeper and deeper as the realities become more significant. This ignorance is abetted by every citizen's belief that the

government budget is too large in relation to the benefits he is getting from it, because so much of it benefits others at his expense.

Conclusion

In a democracy, information costs tend to make governments enact budgets that are smaller than they would be if such costs were absent. This conclusion is true even if both parties and citizens are rational in their political behavior. It is based on the economic theory of democracy, which treats political parties as part of the division of labor, motivated primarily by self-interest like all other agents in the economy.

Furthermore, if economic growth is injected into the analysis, the tendency for actual budgets to be smaller than "correct" budgets becomes more and more pronounced. As society becomes more complex because of increasing specialization, the governing party is less able to allocate resources to those remote benefits which are of increasing importance to the welfare of the citizenry. It is even conceivable that the growing gap between the actual and the "correct" budgets might precipitate a crisis for democratic government. If the society were suddenly confronted by an external threat heretofore latent, its chronic tendency to under-invest in remote benefits might prove extremely deleterious, if not fatal.

However, such projection goes beyond the limits of my model. I have merely tried to use the economic theory of democracy to draw significant conclusions about democratic governments. This theory has been criticized because it cannot predict the actions of individual men, who play a central role in political events but do not always act selfishly. Therefore, it is said, the theory is useless for political analysis. But if it canreveal underlying tendencies in democracy which operate independent of individuals, then I believe it is a useful theory. In my opinion, it can be used to reach significant, non-obvious conclusions applicable to the real world--especially tothe American government. I hope the analysis presented in this article provides an example of such application.

POLITICS AND ADMINISTRATION OF URBAN RENEWAL

Comparative Case Studies of Organization in Local Renewal Enterprise

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Local experience in organizing for urban renewal has not gone unnoticed. But, for a number of reasons it has not been much analyzed. The chief reason is that there has not yet been time. To describe local activity and organization prior to 1954 as if it were urban renewal would be arbitrary. The current idea of urban renewal connotes certain popular enthusiasms and federal aid policies which are different now from even six years ago. It is easier to describe the organization for certain operations which are now regarded as constituent parts of urban renewal.

Compilations are made from time to time showing the form of organization for clearance a nd redevelopment, public low-rent housing, code enforcement, and general city planning operations. The compilers of such lists and tabulations have made clear that it is difficult to describe systematically the other activities of the agency which carries on the constituent function. This difficulty is especially great today when each of the administrative units responsible for a constituent function may be reaching out to the others -- whether reaching out to cooperate or to fend them off.

Elementary and essential to research or organization in local urban renewal are tabulations of the "universe" of local renewal enterprises. Files and directories are available showing for individual cities the activities and forms of organization for such constituent activities as clearance and redevelopment, public low-rent housing, code enforcement, and city planning. But even where such data is complete for the established constituent operations it may not properly reflect the new operations, including the coordinating activities which occur in a renewal enterprise. A few moments' study of the newer editions the directories published by the National Association of Housing and Redevelopment Officials or of the survey issued by the American Society of Planning Officials reveals the growing complexity of interrelations of units in renewal.

The Constituent Organizations

One might refer to the organizations for these several functions as geologic strata deposited over time and only partly metamorphosed. Building regulation a nd environmental health regulation are among the oldest of the constituent activities of urban renewal. City planning, public low-rent housing, and redevelopment came in about that order to the large cities. Usually, these days, the urban renewal program of one or another of the great metropolitan central cities is in the metropolitan press. The newspaper stories tend to spread the

notion that the problem of organization in urban renewal is to bring together a number of officials who over the decades have established themselves as entrenched heads of accepted functions. Study of the directories and compilations gives one a different perspective. Few of the smaller cities have had the full complement. In the scores[1] of cities which enter the federally aided renewal program each year the problem may be chiefly whether to adopt a program of code enforcement or of low-rent housing for relocation, or of clearance-and redevelopment using powers of compulsory purchase, or of city planning. If the community has such functions the problem may be to bring together the bright young man just hired to head the new function and the old fellow twice his age, who heads one of the community's few "old-line" functions important in renewal.

Renewal therefore means different things in different cities. Not only are different goals attempted and different activities given initial stimulation, but the local view of the administrative and political problem differs. When the federal government requires a workable program including a comprehensive set of activities this may be regarded in one city as paper work about the obvious, while another regards it as genuine trade in which one must make very great changes in return for federal money.[2] Also, in most cities, and incidentally not in New York City which is now in the news or in Baltimore which was in the news not very long ago in regard to renewal organization, the idea of local choice of type of redevelopment agency is news. Generally, the small cities have not had the experience of freedom to choose.

The background of federal aid in renewal includes the public low-rent housing program inaugurated in 1937.[3] Under that program federal annual grants are made available to local corporate bodies generally called housing authorities, which use the promised federal grants plus the prospective low rents as the basis for borrowing money to build low-rent housing. The organization of such authorities reflects a number of special characteristics of the Great Depression era when direct federal slum-clearance operations were found unconstitutional and when state debt limits on cities were spreading throughout the land, making it impossible for cities to borrow. The authorities have their own governing commission in the appointment of which the city's mayor or council usually has the chief say. Typically, each commission employs an executive director.

Under the Housing Act of 1949 the federal government encouraged local governments to participate in the clearing of blighted urban areas, and in the planning and preparation of the cleared areas for sale or lease to private firms and individuals and to public[4] agencies. The formula in that Act, and still a major factor in local renewal programs, is aimed at two factors otherwise tending to discourage renewal of blighted areas. On the one hand, the cost of such

land and of planning and preparing it for re-use is high and, on the other hand, the price that may be offered for the property after the blighted buildings are removed or rehabilitated is discouragingly low. The federal government helps to close the gap between cost and price by offering a grant of up to two-thirds of the difference between authorized costs and the revenue from sale or lease of the property. Excluding planning costs, three quarters may be granted.

Under the Housing Act of 1954 this formula was continued[5] but among other changes, more emphasis was placed upon the use of police powers, for health and safety. The use of the word "renewal" signalled that redevelopment was henceforth to be only one part of the program. The federal two-thirds grants for redevelopment and federal aids for housing and special new types of mortgage insurance henceforth were to be granted only in cities with an approved "workable program."

Under the 1954 Act the administrator of the Housing and Home Finance Agency determined that for the Urban Renewal Administration to approve a workable program "the locality must commit itself to the attainment of essential objectives" with respect to seven items, some of which can only be carried out by a city government. Evidence is required that such committments will actually be carried out. "Such evidence may consist of an appropriate statement of the chief executive of such entity."

The early state laws on redevelopment, some passed prior to 1949, varied among those which gave redevelopment powers to local housing authorities; to special local authorities with redevelopment as their sole function; or in a few states to the cities themselves. State legislation has only gradually changed to permit the council to choose among these. Much of the old state legislation persists, but more and more states permit the municipality to choose the agency to be in charge, or authorize the municipality itself while permitting it to delegate renewal functions. States utilizing the model bills drafted by the federal government first tended to establish the local housing authorities or special new authorities, as responsible for urban redevelopment. The present federal model, for use in states not already following the former one, includes current federal policy which states:[6]

> It is recommended that the authority to undertake urban renewal projects in these States be conferred on municipalities for exercise by the municipality itself or by one of several other prescribed public bodies selected by the municipality. The governing body of the municipality, should be authorized to delegate ministerial and administrative functions under the proposed legislation to any

appropriate body or commission of the municipality. In the alternative, the governing body should be authorized to elect to have the urban renewal projects undertaken by an existing housing authority in the community or by a new public corporate body, known as an Urban Renewal Agency, which the municipality would be authorized to establish. Such authority or agency should then have the necessary powers to undertake the urban renewal projects itself without any legal delegation of functions from the municipality. This would give municipalities desirable administrative flexibility and also permit the use of a separate public corporate body where that is necessary or desirable to meet constitutional or statutory requirements in the financing of urban renewal projects.

The really difficult problems in describing local organization of urban renewal operations have to do with coordination. Just for example, some cities have placed renewal operations under a director on the departmental model, sometimes with the variation of placing a commission at the top. Some have established a coordinator while avoiding formal unity as a department. Some have given an assistant to the mayor a position of authority over a wide field and given him power over each unit, similar to a department head.[7] There are many variations. Different operating and planning functions may be placed under such direction. And there are a number of cities where there is a joint appointment -- that is, where the coordinator is also a director of some constituent operation or where one director serves two of the traditionally separate operations. Some examples of all these types of arrangements have been well publicized. Two cautions are suggested in considering them: first, some of them are frankly transitional and all of them may reflect particular situations; and second, there is such a thing as renewal coordination without the label. The city manager or mayor or general manager may devote himself to the task. And there are a number of cities where, again, the coordination arrangements may be merely transitional, but where they seem to rest chiefly on mutual respect and long association among a few major officials. Which of these arrangements is likely to be best is, of course, another question some aspects of which may be illuminated by research I shall report in a moment.

Perhaps the greatest difficulty in describing the significant relationships in urban renewal is to make clear the role of associations of businessmen or other citizen groups and of private firms. A fundamental concept of federal housing legislation is the participation of such firms and associations and, indeed, of the individual householder. Certainly one cannot describe renewal in Pittsburgh without mentioning the associations clustering around the Allegheny Conference nor understand the organization in Oakland, California or New Haven, Connecticut without describing committees of citizens. Whether or not the committees

are appointed by city officials and have legal powers as boards or commissions, their roles must be assessed. Similarly, whether or not firms are already under contract with the local public agency, they may be key elements in the local structure.

To complete this review of some elements coordinated in renewal, I want to mention another factor or aspect which must be taken into account in describing the structure of a local renewal enterprise. Like the Cheshire cat, the more you look at an organization the more the cat seems to disappear leaving only the smile. Someone has been reduced to describing the organization as a group of roles held together by communication. I would amend that to read "held together chiefly by expectations." Forward-looking action is what it is because people expect other people to react in certain ways. Then such action in renewal may be affected by waves of enthusiasm and changes in federal policy toward disbursement of funds. A place must be found for such matters when describing the relation of organization to achievement in urban renewal.

Many people believe that the form of organization may be significant for achievement. We chose to center our attention on the city government's chief executive -- that is, on the part of the structure of the renewal enterprise which centers on the chief executive of one of the major participating organizations. Although this was our focus, we ranged over some neighboring fields. Our studies were in part on a quantitative basis, using statistical methods. I shall devote a moment to describing results of these before moving on to the case studies.

Statistical Studies

Because of the large number of cities, systematic study of the relation between type of organization and achievement in the United States probably requires a statistical approach. But the problem is different when one confines his attention to those which have had considerable experience with federally aided urban renewal. Some 208 cities had entered upon federally aided urban renewal by mid-1957 and 93 of these had one or more projects in execution. This was too large a number for field studies and too small a number to permit useful random sampling. There appeared to be two good[8] alternatives in research -- comprehensive coverage for aspects not requiring field study, and field studies of systematically selected cities.

With the data available very few relationships could be traced between indices of substantive accomplishment and type of organization. What is more, such studies were likely to be misleading because certain organizational types were disproportionately represented among the cities which entered the federally aided program early. These, of course, tended to have the greatest accomplishment

by the time we came to study them. Links between type of organization and early entry are interesting in themselves. A study of "procedural progress" was undertaken as a modest substitute for a study of substantive accomplishment and as a vehicle for study of early entry and speed of action. This study of procedural progress showed, in respect to general form of government, that:

(1) Once entered into the program, cities with different forms of government displayed no significant differences in tendency to arrive at final planning or execution stages, nor in tendency to drop out of the program.

(2) Council-manager cities were under-represented in the program but entered in increasing proportion in later periods.

(3) Forms of government under-represented among the early entrants tended to advance more rapidly once they had entered the program, but this difference was not statistically significant. In respect to type of local public agency (LPA) the study showed that:

(4) There are significantly lower percentages of city local LPAs and higher percentages of combined housing and redevelopment authorities among cities which have reached later stages of procedure. This is explained by the later date of entry of more of the cities which are their own local public agencies. Redevelopment agencies showed a significantly lesser role of advancement through the procedure than housing authorities and city LPAs.

Case Studies

Clearly, statistical studies relating only one or two formal aspects of organization to achievement are not sufficient. But data on other aspects of organization are not available for large numbers of cities. To examine several aspects at once and to obtain data on such aspects, field studies were needed. Field studies also have the advantage tha t they may identify aspects of the enterprise other than structural.

Field studies were conducted in two stages. I first visited a large number of cities for a brief reconnaissance. Eventually authors and author teams conducted field studies in certain of these cities. My preliminary survey was largely unstructured, or, rather, was structured in part by the attempt to supplement my own prior field experience and to make administrative decisions. The case studies were conducted more vigorously. Propositions were stated, some common terminology was provided, cases were systematically selected and grouped, and authorship was distributed among six authors and author teams, all in an attempt at more discipline and less bias.

in interpreting the results, however, I have felt free as have the other authors, to bring to bear other knowledge and insight, or if you will, bias. The case studies do not constitute a statistical sample. They are rather rigorously selected. Our hope was to be more rigorous than work done previously, to introduce, not to end, systematic study in this field.

We conducted case studies in 18 cities. The cases were analyzed and reports written in six groupings of three cities. If we assign the letters A, B, and C to the three cities described by one author, each such set permitted the author to make comparisons between the following pairs: AB, BC, and AC. Each group of three permitted a comparison between two cities contrasting in population size but comparable in general form of government; one pair varying in form (mayor-council or council-manager) but comparable in size; and one pair varying in both respects. Two 3-city groupings were confined to each of the three types of LPA: (1) city local public agencies; (2) cities with redevelopment authorities; (3) and cities with housing and redevelopment authorities. Three groupings were regional, three were not.

Each observer conducted his studies by preliminary review of documentary materials, followed by interviews with each of a panel of persons occupying pre-selected "positions in the community".[11] The author of each report made judgments expressing his conclusions, including his conclusions on the relative achievement of the three cities. Each adopted a standard of achievement he felt suitable for the three cities in question without regard to its applicability or inapplicability to other cities. Because the cumulative renewal achievement of a city may not reflect its current organization, two of the authors found it necessary to distinguish cumulative from current rate of achievement and relate the latter to current organization.[12]

The method of selection and comparison has the following advantages: First of all, it forces one to compare. The chief trouble with comparative studies, as has often been said, is that they don't compare. Second, it permits comparisons where some of the variables have been standardized. Third, it provides a kind of "control" in that different aspects are alternatively standardized.

Another factor which entered explicitly into the selection of a city was its nomination as one with an outstanding program in its region. This judgment was extracted from regional staff members[9] of the Urban Renewal Administration. While we could not study all the cities which were nominated, the selection permits us to compare better with still better programs. By avoiding the cities of low achievement we hoped to avoid too great a scatter among factors affecting achievement, and to avoid the more difficult problems of interviewing.

Conclusions

A set of propositions was distributed to the authors of case comparisons, with the comment that they were merely tentative hypotheses set forth to suffer whatever fate the field studies meted out.[13] Based on the observers' judgments, I may summarize the most important of the findings for these 18 cities as follows:

Among the case-study cities current achievement is not consistently associated with general form of government. Small council-manager cities showed greater personal committed activity on the part of their chief executives. Leadership by the chief executive and a more executive mode are, on the whole, associated. This relationship is stronger when population is held more constant. Large cities displayed more achievement in more of the pairs than did small cities. Among those larger cities which displayed greater achievement there was no general tendency for them also to differ in dominance of the executive mode or in leadership by the executive than their pair cities. The chief positive conclusion relating to structure in these cities was that a more executive mode and more leadership by the city's chief executive was accompanied by greater achievement when size of cities was standardized.

Interpretation

While providing provisional answers to some questions, the comparative case studies raise others. Among these cities size of city seems to be a factor in achievement but larger size does not seem to call for a more executive mode, as the traditional administrative theory implies. More significant differences may lurk in the data on size and achievement. The tendency for larger cities to display greater achievement is not clearly replicated in such quantitative data as was used to check and raise questions with case study authors. A factor in the observer's judgment of achievement was the way such cities handled conflicts in urban renewal. Perhaps a less executive mode is sometimes necessary when a community is torn by intense disagreements among nearly evenly divided interest groups. In large cities the disagreeing groups appear to be willing to support each of the several renewal treatments, provided that they are not brought under one irresistible organization which could perhaps impose its views as to areas to receive each type of treatment. Some groups would rather sacrifice program accomplishment than their influence over it. Effective achievement under such circumstances may favor an organizational structure of rather independent units encouraging bargaining and compromising, and leading to policies which would not attract intense opposition.

In small cities, on the other hand, where the blighted area is concentrated, entrance into the program may depend upon general agreement on the kind of treatment for specific places. The small cities considered by the observer not to have greater achievement included several where the observer concluded that the city was sacrificing other objectives to immediate quantitative progress, even at the risk of the continuity of the program. I would hazard the guess that the more executive mode in smaller cities reveals two factors -- the greater agreement on renewal in those small cities that enter the program, and a technical factor. The greater unity explanation is bolstered by the fact that small cities in the program showed up as well as they did in our comparison, although we had greater difficulty in getting nomination of enough small cities. When they enter they tend to be united. The second or technical explanation is that full-time city executives have a greater opportunity to lead in renewal and get an executive mode established over more of the operation. The tendency for more executive dominance in smaller cities would be even greater were more of the executive officers of such cities on a full-time basis.

Among types of LPA the case studies supply no systematic basis for comparison. However, the suitability of the LPAs to an executive mode of coordination may be analyzed. The city LPAs are more obviously suited to hierarchies which encompass both conservation and clearance activities, but low-rent housing is rarely brought within such a hierarchy. In the cities with a housing and redevelopment authority the jurisdiction of that authority extends over those two fields but ordinarily not to conservation. Apparently jurisdiction over police power regulation is never delegated by state law to such a special purpose local authority.

In general, none of the LPA types is really suited to the full development of the renewal enterprise. A trend toward greater flexibility in organization and more local choice among types, which can be traced in state legislation, is evidence of general agreement that the old prescribed patterns are not enough. The trend toward coordinators and directors of renewal, and the greater use of joint appointments is evidence of the unity of the enterprise as seen by more and more communities. This followed as soon as the federal government relaxed its former rules requiring its field representatives to use only the LPA channel of contact and called, instead, for some evidence that the several local entities were coordinated. Once this opportunity was given them communities have used local powers or urged change in state legislation to break down the rigidities in official structure. By joint appointments, the most resistant of these rigidities are being overcome.

While the official side of the local renewal structure is being unified within cities and is becoming more varied among them, the local enterprises are having to accommodate better to the participation of nonofficial organizations and individuals. There is a federal requirement that there be citizen participation. The requirement underlines the importance of participation. However, there is some tendency to view the requirement for participation in isolation from the federal requirement that there be adequate administrative organization. City councils, boards and commissions are, of course, evidence of citizen participation in the ordinary meaning of that phrase. But its technical meaning in renewal is sometimes interpreted as necessarily calling for a special newly organized committee of citizens.

Terms and Concepts

For at least three reasons it is necessary in this paper to say something more about some of the ideas which guided the empirical work. The meaning of the findings may be made more clear. The validity of the results may be better judged. And I hope that these words will help people talk and write of their experience. What I have to say about concepts may be organized around the issue whether we begged the question of executive influence. By and large in renewal enterprises in 18 cities a more executive mode and more leadership by the city's chief executive was associated with more achievement when the cities compared were not greatly different in size. Did we beg the question in respect to the influence of the chief executive and the dominance of the executive mode? Have we found a way to describe situations so as not to beg such questions? To answer these questions we must consider all of the chief analytical ideas used in the study. Certainly we did not assume that the titular head of an organization is always in the channel of every influence for change in an enterprise. Indeed, our case studies present evidence to the contrary.

Also, we did not limit our attention to the channels of official communication. Some writers seem to suggest that an appropriate method is to discover and properly weight (perhaps by their volumes) **all** flows of communication in administration, or all flows reaching persons active in decision. Our preliminary studies indicated that this would be insufficient and might be actually misleading. Many respondents reported that in decision-making they took into consideration opinions and attitudes of persons who had not communicated and were not expected to communicate with the decision-maker on the subject at issue. Is it much help in such circumstances to attempt to impute to communication, however, indirect, infrequent, or unlikely the transmission of influence?

George Duggar
Politics and Administration
of Urban Renewal

Authority and Anticipated Reactions

It may be better to leave open and researchable the whole question of communication, and to focus attention on the influence itself at the point where it tends to affect action. For this more direct approach to influence the idea of "anticipated reactions" may be more useful than the idea of communication. We focus on the[13] following question: The reactions of what people did the decision-maker or other actor take into consideration? Secondarily, what constitutes the authority of such persons? Of course, in judging these matters we may use information on communication as circumstantial evidence.

The alternative, of focussing on communication itself seems to me to slam the door that was opened by sociological and social-psychological perspectives. The very authors who could offer us most from their perspective may be most misled by channeling too much of their effort on actual communication.

Of course, the study of anticipated reactions is only a partial view of influence. It is a forward-looking or ex ante view of influence. For an ex post view, consider the accumulated influence resulting from past experience in a leader-led relation. From such experience the led may come to award authority upon a leader, an authority which may vary greatly from his formal powers. In this way authority may be based to a degree on the anticipated ability of a leader to give reasons for and to exercise reasonable restraint in use of his formal powers.

A feature of our method is our open-end use of the rule of anticipated reactions. We asked respondents to say whose views they felt it necessary to keep in mind, and we asked for evidence relative to who did or could cause difficulty or delay or extra cost were their views not correctly anticipated and given sufficient consideration.

Leadership

A related characteristic of our method is an attempt to grasp the slippery substance of leadership. Provisionally, leadership in an enterprise is so defined that any participant in an enterprise may be a leader, perhaps all are. The degree of leadership depends upon the degree to which his relation to other participants in the enterprise has consequences for the enterprise. Included in leadership are cooperative actions. But leadership also includes direct influences or authority exerted through the anticipation of a leader's commitments, ability to act and, indeed, his authority with others. Since leadership may be expressed chiefly through action,

through commitment, or through authority itself, we are sensitized to such varied leadership as the following: the presentation of a new design to which formerly contending groups can commit themselves; the persistent but routine activity of second and third echelon officials at city hall, by which the fabric of the enterprise is maintained; and the elected officials and private citizens whose opinions are given weight in decisions affecting renewal.

In using this three-sidedleadership net we should have caught and did catch leaders of various characteristics. That is, the net is not so contrived that it explains our catch of city executives. The prominent role I have come to assign such executives must be derived from other factors. That the net may have some holes in it, and is rather clumsy to handle is a secondary matter, but one which suggests needs for further research.

Achievement and Program

Another characteristic of the method we followed is our approach to the comparison of achievement in local renewal enterprises. If one were concerned with one organization rather than the association of several organizations in an enterprise one would begin with a discussion of the objectives of the organization's program. In a description of an enterprise it does not matter so much where you begin. The programs of the several organizations differ, and the programs of enterprises in different cities differ although all the enterprises carry the same name. For any administrative system, however, one may describe certain idealized versions.

The version of chief interest to us is one which calls for the elimination of the experience of slums and blight. An idealized version would say something about the speed of accomplishment. Just what would be most ideal in this respect is difficult to say. Personally, I am satisfied to accept one of the slogans such as "No slums in 10 years."[14] Such a slogan, though very ambitious, is of course, more or less practical, more or less realistic, more or less a compromise with the more extreme position that might be taken.

We also may have to expect some compromise with other objectives. Thus it is often claimed that objectives ought to be stated in terms of efficiency, that is as accomplishments relative to values sacrificed. Presumably the ideal would be an infinitely efficient enterprise. Obviously we must compromise again, to be realistic.

Furthermore, when the administrative system in question takes the form of an enterprise rather than a single organization even efficiency may be unstable or unrealistic or both. Even for a single organization I have my doubts. In any case, in an enterprise we must consider the possibility that at any one time the continued participation of a participant may be more important than substantive progress. Each participant may be dependent upon the participation of another.

Since there may be no agreement on a preference scheme among the several participants in an enterprise there may be no single definition of efficiency. As in economics, where the concept of efficiency gives way to a concept of productivity when entities are grouped, so when an enterprise rather than a single organization is under examination the concept of efficiency may have to give way. But if we have no dominant objective do we have no way of measuring achievement?

It seems to me that the search for a standard of achievement may lead us to express program in the language of margins or indifference curves, as in economics. We should have to say that the greater achievement in a situation is that which entices the marginal unit of locally necessary participation -- or prevents the alienation of such participation. When achievement is described in this way must the standard of achievement be trivial and transitory and unimportant for the objective of eliminating the experience of blight and slums?

I think not. Also, once a group of participants have invested time or effort or money or reputation in an enterprise they become committed to minimizing loss or to increasing return from their "investment". Other people begin to oppose the project, perhaps, or the participants believe that the project is threatened by inertia. In any event, a group of committed participants exists having in common the desire to progress with the enterprise. And the need for continued participation by the federal government makes it difficult for the enterprise to swerve far from the general national objectives.

Process

The process of urban renewal varies with other aspects of the enterprise, namely the program, authority structure, and relation to other enterprises in the larger community. But within the range of local variation it is useful to describe a sort of median urban renewal process which "reduces the experience of slums". The enterprise advances area by area throughout a city. Not long ago we should have said throughout the blighted areas of a city. But renewal processes are now

proposed for use in all areas which have been put to urban use. Two aspects of the process deserve mention, the process in the city as a whole and the process within a project area.

The process or an important part of it in the city as a whole may be illustrated by a time chart which shows time by a line drawn across the page and shows activities vertically. I have seen such charts where the displacement of families and the accommodation of families from all projects in the city are shown respectively by vertical bars falling below and rising above the line. There may be overlaid on such a chart a line indicating the net surplus or deficit created cumulatively by the program as it proceeds area by area. Leads and lags may be shown indicating when other actions must be taken if the demolition and new accommodation is to take place as scheduled. In such a perspective many of the timed interrelations of the renewal enterprise may be indicated. The process may be viewed as the reverse, in some ways, of an assembly line. Peak activity moves to different areas in succession sometimes to several areas at once, rather than having the "assemblies" move along an established "line".

When these interrelations are seen as proceeding from an initial decision the relationships appear as merely the transmission of a motive force into a myriad of implications. But the character of the process is to be fully understood only if it is realized that the decision to proceed with the program is also always in process. As the first project is executed hope and apprehension give way to experience. Loyalties and enmities created in the first p rojects carry over into subsequent ones, and what first appeared as makeshift procedures harden into ways of doing things which are defended and attacked on the basis of principle. Process matters in determining structure partly because process imposes a requirement of flexibility, adaptation and defensibility in the structure. A good structure must serve policy-making, not just policy effectuation.

For each project rather elaborate preparations within and outside its boundaries are needed. The most significant characteristic of the process is the extent and comprehensiveness of the planning and programming. In an idealized version of comprehensive planning plans would be ready to put into action for any area at any time. In a more usual and useful description of the planning process a proposed renewal project clearly spurs planning if, indeed, renewal does not bring planning into being.

Within each project area there is also a need for fast and decisive action. Each phase in the cycle has its own preparatory time. Delay in any stage tends to cumulate, owing to delays in communicating information about the first delay, and owing to difficulties in rescheduling. The pressure for faster action and therefore quicker changes can mount like the demand for swifter skating in a game of crack-the-whip on ice.

The process within each project area also demands wide and great authority. Voluntary cooperation, assent to persuasion, possibly even substitution of one participant for another, may fail. Either more money or compulsion or both may then be needed. The process requires use of eminent domain, police powers for regulation, and public expenditure powers supported by borrowing and tax powers. Community pressures may be drawn upon going beyond formal public powers.

The process in each area is political as well as administrative. An increasingly large number of persons come to recognize their interests as the project becomes more precise and assured. Tensions are created which must be eased, redirected, or absorbed. All concerned may go through periods when they attempt to belittle renewal, fight it, find a plan better for themselves, control the renewal, or protect themselves from its consequences.

The process requires much forecasting of attitudes, and much effort to persuade. The inertia at early stages and the momentum and tensions later on place premiums on accurate forecasting of attitudes, persuasive powers, prestige, and funds. The intensity of the argument between advocates and opponents of the project tends to increase as the project impends more clearly and more promptly. And the changing intensity of interest may affect the program as a whole and the structure of authority for the renewal enterprise.

Authority Structure and Mode of Coordination

An authority structure for an enterprise is a system of authoritative human relationships affecting the progress of an enterprise. A mode of coordination and adjustment serves to pattern some of the relations in an authority structure, linking them and stabilizing them. Formal organizations provide the most obvious and elaborate examples. A city government, for example, may be pictured as a vast complex chiefly of formally scalar relationships. These relationships of formal superior and subordinate are linked with a set of relationships within a governing board and between a chief executive and such a board,

and among board, executive and electorate. The whole complex is interdependent and fairly stable. But it is only part of the authority structure involved in an enterprise such as renewal. The complex for the city is linked with other complexes such as those for special purpose municipal corporations, citizen associations, firms, and the federal government.

The ideal authority structure for a particular enterprise is, of course, one which serves the enterprise best. Enthusiasts for a particular enterprise often prefer a structure with concentrated authority. They count on capturing the seat of authority. But the very concentration of power may imply a concentration of responsibility which leads key figures in the structure such as the chief executive to fend off all attempts to commit his authority to any particular enterprise. Deep and public commitment to any one program can be inconsistent with the very idea of executive responsibility.[15]

There are four sources helping to commit local authorities to urban renewal, (1) federal and state governments, (2) national and regional businesses and labor organizations interested in the economic activity, (3) the activity of other cities which, as pictured by national media, set a standard for what a city ought to be doing, and (4) the competition of neighboring cities.

The ideal structure for the moment is determined with respect to the kinds of projects, the actual motivating objectives, the stage of the process, and the participants necessary and yet likely to be lost to the enterprise. But static structure is not likely long to approximate that ideal. The mode of coordination which is likely to serve best is one which can gather intelligence and adapt activity to changes including changed expectations, and either persevere through crises or disappear gracefully allowing a new mode promptly to emerge.

We examined the degree of dominance of the executive mode quite dispassionately. The terminology gives no special weight to official status or official modes. We attempted to let conclusions on mode and persons develop from the interviews with local respondents through open-end questions and probes.

Furthermore, we were conscious that some of the change and adaptation required of a renewal enterprise is that decisions are not final in a democracy and that an enterprise best adjusted to popular support may be the one which provides opportunity for open controversy attracting public attention.

We did not have a typology of modes of coordination at the time we conducted case studies. But we did have more than one model in mind. A "circle of leaders" was one, which referred to a situation where a number of active and committed renewal leaders were not formal subordinates of one another. I believe I would begin to develop a typology of coordinative modes by considering alternatives to the scalar relation. Two such additional principles occur to me, equality in negotiation, and mobility or freedom to find substitute partners to transactions. I think a useful and detailed typology of coordinative modes might be developed with these and scalar relations as three chief variables.

The mode of coordination not only patterns actual actions but makes more secure people's expectations regarding those actions. The executive mode, with its hierarchical principle accomplishes this. The other modes do also. In the mobility mode expectations concerning the transactions that can be arranged are made more secure by increasing the number of alternative persons who may be approached to make the transaction. In the negotiative mode expectations may be made secure in the belief that more persuasive pertinent arguments may more securely be expected to prevail.

We found that the chief executives tend to specialize in limited aspects of urban renewal leadership. Among the cases where greater achievement in renewal is associated with more primary leadership by the chief executive the executive tends to specialize in lowering the bars to action and in raising the level of commitment. He is not the most active leader in most cases, except that he is sometimes active as a "bridging" leader, that is he conducts relations where the city's proper role is still being established or where it is ambiguous, or where the relationship is otherwise not clearly and generally recognized as primary and legitimate, as in the relation between a city and a suburb, or between a city and another level of government, or between a city and a private redeveloper.

Enterprise

The last and, I think, the most important and inclusive characteristic of our method is our distinction between enterprise and administrative organization. It sums up many of our other concepts. Some organizations and all enterprises are administrative systems. By administrative system we refer to cooperative activity in a community. To constitute an administrative system human interaction need not necessarily be habitual or generally recognized. But the activity must be cooperative, forward-looking and led. In seeing such activity as a system one thinks of it as tending toward an equilibrium.

The study of organization then appears as partly relevant and partly irrelevant in study of an enterprise. In an organization human interactions are primarily habitual and generally recognized but are not necessarily forward-looking or led. Organization is an enormous category and much of what we know about organizations is not necessarily pertinent to understanding enterprises. We use the term administrative organization to refer to cooperative action in a community where the criteria of organization and of an administrative system are both met. We say that administrative organizations tend to become adaptive institutions. By this we mean that the relation among the members tend to become mutual and interlocking, not merely cooperative and paired.[16] Purposes tend to be shared.

The name enterprise is given to a certain form of administrative system. This is the kind of administrative system found in local urban renewal activity. Whether or not it is found widely in other activities, we use the concept to describe a system of forward-looking and led cooperative activity in a community where the participants follow diverse programs, do not recognize the same authorities, or do not assign the same weights to them. Under the laws and regulations, federally aided local urban renewal activity can rarely if ever display all the criteria of an organization. Rather, renewal must be an enterprise, since local as well as federal, private as well as public, civic as well as profit-making and neighborhood as well as citywide organizations participate as independent organizations following different (although not necessarily conflicting) programs and recognizing varying authority structures. They do not even "tend" to agree in these respects. We view local government organization or organizations as engaged in several enterprises. We see the chief executive as having varying commitment to various enterprises in which his organization is engaged. We should therefore be able to avoid the circularity that can occur when one defines an organization as serving some overriding objective and

then finds the chief executive as the chief influence on the activity because everyone else is chiefly committed to fractions of the overriding objective. An organization may serve one overriding enterprise, but this is a researchable question. And, in any case, the administrative system for the enterprise includes more than that contributed by any one organization.

A Summary Description

A summary description or definition of a local federally aided urban renewal enterprise may help to emphasize the conditions to which our observations apply and to point up leading concepts used, and their relations one to another. In an empirical study the most significant concepts and hypotheses may be those which are drawn from the study. I think this may have happened in our case. I would now define federally aided local renewal as an enterprise in which federal, state, and local powers are mobilized in a campaign so to direct physical development activities area by area as to reduce the experience of slums and blight, and ultimately to improve urban environment under procedures giving consideration to other objectives. This definition emphasizes program, process and authority structure. The definition asserts that renewal is an enterprise, declares that there is a median area-by-area process, argues that at least one objective is insisted upon as a standard by at least one of the necessary participants, and makes the state of popular enthusiasm a significant descriptive variable. 17

The study was an attempt to avoid certain practices regarded as errors in past studies and to demonstrate some ways to do this while making some positive contribution. On the negative side we attempted to avoid the errors of early studies of community power, with their implications that power is a private conspiracy and that there is one generalized community power structure. We hoped also to avoid the errors of early administrative studies that implied that study of official powers was always central and critical. We made an effort to avoid the error of neglecting objectives and the error of assuming that the leading official objective is unitary and always most influential in practice. We tried to give emphasis to process without letting that emphasis make the whole enterprise appear self-perpetuating. These are high hopes.

I also have hopes relating to the positive contribution of the study. In research a negative finding may be a positive contribution. The negative finding in respect to the significance of general form of government for renewal achievement is, I hope, such a contribution. More obviously positive are the findings

that among the cities studied executive mode and leadership by the chief executive are related to renewal achievement and are more closely related when population of the community is first standardized.

Besides these positive findings based on the formal comparisons I hope we may have provided some positive perspectives, concepts, and hypotheses. I refer chiefly to the perspective on organizations in association as an "enterprise", to the concept of a process by which these are related which we have called "bridging", and to a number of untested hypotheses which are beyond the scope of this present report but derived from the case studies.

Notes

1 In 1958 some 85 cities were added to the list having a project approved for planning. John Lange, "Housing and Urban Renewal: Developments in 1958" in International City Managers Association, Municipal Year Book, 1959 p. 324.

2 Among 163 cities reporting, 247 "most difficult" elements of the workable program, the numbers of cities choosing each element were as follows (Lange op. cit. p. 339):

relocation 70
financial ability 53
codes and code enforcement 45
citizen participation 40
comprehensive plan 13
adequate administrative organization 10
neighborhood analysis 7

3 Public Law 412, 75 Cong. 1937.

4 Public Law 171, 81 Cong. 1949.

5 Public Law 560, 83 Cong. 1954.

6 U.S. Housing and Home Finance Agency. Urban Renewal Administraton. Local Public Agency Letter No. 45 Housing Act of 1954 (December 29, 1954).

7 Among 242 cities of 5,000 or more population reporting on the coordination of the renewal program 158 reported a central agency or official coordinating or administering "a substantial amount of the urban renewal program." The coordination of public low-rent housing with clearance and redevelopment is probably provided

by a special authority, perhaps along with some control of planning (but not enforcing) conservation programs. I judge this from the fact that in 53 of the 127 cities reporting a full time director of a central renewal agency the coordinating official or agency was appointed by a redevelopment or renewal agency which does not possess police powers for enforcement of building or health ordinances of the city. In other cities it is likely that the coordination of code enforcement with clearance is effected but that public low-rent housing (everywhere conducted by a commission with some claim to independence from the city government) either does not exist or is not so coordinated. The coordinating official is appointed by the city manager in 31 cities, by the mayor in 21, by the city council in 7, and by the Army Corps of Engineers in one (Washington D.C.) (Lange, op. cit. p. 329).

8 Statistics of the Housing and Home Finance Agency. By the end of 1958 the number of cities with a project approved for use of federal funds for planning had increased to 386 with 648 projects.

9 The authors of the case comparisons were asked for judgments on five propositions:

1. The more dominant the executive mode formally assigned by law in urban renewal, the more dominant the executive mode of coordination and adjustment and executive leadership.

2. The more dominant the executive mode in the local urban renewal program, the more outstanding the leadership of the city's chief executive.

3. The more dominant the executive mode in urban renewal, the greater the progress of the program.

4. With the passage of time in an urban renewal program which continues to progress, the organization becomes more fully and clearly characterized by a more dominantly executive mode and executive leadership.

5. Between cities of very different population size and similar general form of government, executive leadership and the executive mode are less dominant in the smaller while urban renewal achievement does not vary with size.

The authors of the general studies attempted some further generalizations:

6. Between the council-manager and mayor-council forms of government, (a) executive leadership and the executive mode in urban renewal are greater in the mayor-council form; (b) urban renewal achievement is greater in the council-manager form.

A seventh proportion related to:

7. Leadership by the city's chief executive among the three types of local public agency.

10. Population contrasts were at least in the ratio of 5 to 3, usually greater.

11 Included were some 24 positions. To these the observers added other people suggested by those in the standard panel.

12 Observers were asked to judge achievement in respect to:

a. Substantive accomplishment or program
b. Continuity
c. Efficiency in sub-programs
d. Other indications

The observer determined which of these to stress and how to define each in a way which would reflect fairly what was being attempted in the three cities in question.

13 Carl A. Friedrich, Constitutional Government and Democracy (1946) p. 589.

14 U.S. District of Columbia, Redevelopment Land Agency, No Slums in 10 Years: A Workable Program for the District of Columbia; By James W. Rouse and Nathaniel S. Keith (1956). The objective of federal housing policy is to be reached "as soon as feasible". Preamble, Public Law.

15 Herbert A. Simon, Donald W. Smithburg, Victor A. Thompson, Public Administration (1950) pp. 395-6.

16 Philip Selznick in his Leadership in Administration (1957) has as a main theme this idea of organizations as adaptive institutions.

17 Urban renewal in a campaign in the sense that it calls for an especially vigorous effort in the early years, to rid a city of blight, followed by the more stable "perpetual regeneration of the city's neighborhoods, commercial centers, and industrial districts." (Chicago Plan Commission, Recommended Policies for Redevelopment in Chicago (1954).

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George Duggar
Politics and Administration
of Urban Renewal

ADDENDA

I Now, if we accept the objectives of national, state,and local legislation as ends, and consider local government organization as means, we can move on to recommendations for organization of urban renewal. The following is not a conclusion from the study in the sense that I now complete a syllogism or that I spell out additional findings. Far from that or those, I should like now to play a hunch and get this group to discuss it. What should local organization for urban renewal be, given the objectives? I'll confine my remarks on this to cities within metropolitan areas.

In my answer to such a question I fall right into line with enthusiasts for every other field of local government activity. When they are asked how local government should be organized they say that it should be so organized that their pet function is the dominant line function, with other functions accepted perhaps, but reduced to staff relationships wherever necessary. The officials in charge of the pet function should have direct access to the legislative officials. My only difficulty with all this is that I have to admit that a more executive structure of local government is also desirable.

In organizing for public education in this country, as well as in organizing for many other local services the sticky point has been that the enthusiast for the function does not want to give a generalized chief executive or general governing body too much control over the specialized functional executive. The logical conclusion is that reached in local school administration: you form your own special purpose governmental unit and give it its own governing body, its own taxing, eminent domain, and truancy policing powers.

Similar enthusiasm leads to similar results in the toll "authorities" for highway transportion. In the days of redevelopment prior to comprehensive renewal similar enthusiasm led to similar results. The independent redevelopment authority without taxing power became a realistic solution when the federal government supplied a large part of the difference between costs and sales price.

In comprehensive renewal, on the other hand, the school-board/toll authority device is impractical. I think it is, in particular, the extensive police powers of city government which clinch the argument. I know of only one case where it was seriously proposed to award these to a special renewal authority. But in many other ways also, notably in financing local grants in aid of renewal, city powers are needed. So a new type of ideal organization is needed in renewal. I can think of only one. It is very simple.

It is to make city government primarily an organization for urban development and renewal. One can develop this idea negatively or positively or both. When talking to city officials it is more fun to tell them that

they should slough off everything else or, better, to argue that they are losing almost everything else, anyway, to some other level of government. Most of them do not have responsibility for schools. Many have lost major highways, harbor, and airport facilities to toll authorities, other highways to a federal-state-local holding company, health and hospitals and, in a few cases, even police to state governments, and much else to special districts or counties or metropolitan governments. One can argue that what is left is the fire department, sewers, bookkeeping--and urban renewal.

More positively, one can argue that now and for the next few decades the American city governments ought to concentrate on urban renewal. It is silly that in a country with such a high standard of living the physical condition of cities is ugly and depressing to a degree not to be found in most cities of similar sizes elsewhere. Renewal, together with development to accommodate a growing population, is a great frontier.

What is more, these activities offer a focus for citizen interest. Spokesmen for city governments cannot get much response to the analogy with ancient Greek city-states when the attitude of people likens cities to supermarkets (with the reservation that supermarkets are newer). Even a supermarket may find it useful to have some major understandable field of service. Urban development and renewal provides an important issue worth arguing about. Such things can make city hall every citizen's own enterprise, not a store kept by someone else.

A. If we consider urban development and renewal to be the chief function of city government we can describe the organizational implications as a series of propositions. I would suggest the following:

1 Local official participation in the renewal enterprise should be brought under the authority and responsibility of the local chief executive. This implies, among other things, that where there really is no chief executive the city government should be reorganized.

2 Urban development and renewal should be recognized organizationally as the chief line responsibility of city government. It includes relocation and re-education.

3 Urban renewal proper should be recognized organizationally within the larger development and renewal function, but not necessarily as a functional line.

4 Even where some or all of the above cannot be attained organization for renewal should provide for staff regulations among the development and renewal units of the city government and bridging relations between local government authorities.

5 Where a constituent renewal activity is neither supported nor opposed by a preponderance of public opinion the activity should be given some formal organizational identity (some degree of formal independence) to protect it from smothering, and the larger government from being misrepresented. This proposition may shrivel to nothing where the constituent activity is itself essential to a larger renewal program which does have preponderant support.

6 Where renewal treatment is expected to vary greatly among the several areas of a city as in some large cities, or where the city has not yet examined its renewal problem sufficiently to know what treatments will be necessary, some degree of formal independence for some of them may be desirable, provided that strong influences exist for cooperation among such units and city government.

7 My seventh proposition recognizes the tendencies both to motorize and to urbanize, to use Wilfred Owen's phrase. Some separation is desirable between city units for streets and street utilities on the one hand and urban development and renewal on the other, in recognition of certain conflicts in land use between them. While the primary importance of the urban fabric in most areas and the primary importance of the transportation and utility channels in certain key areas are obvious there are borderline cases where provision should be made for public airing of conflicting points of view. There should also be a higher authority and a planning staff available to it and not controlled by the two conflicting departments.

8 Because the cyclical rhythms of general physical planning and renewal project planning are not the same it is desirable to separate the two whether they are both within the general planning agency, both within a development and renewal agency, or one within each. And general physical planning should not be a subsidiary function within an agency whose assignment is transportation or excludes transportation.

8 Too often all other questions of local organization for urban renewal are lumped as "citizen participation" and too often it is assumed that a special committee for that will suffice. I would argue that we should think of participation of groups as well as by individuals. Also, we should distinguish "transacting" groups and individuals (by which I mean ones who reach firm agreement with the city, usually by contract), from the formal organizations of opinion. There are knotty problems in the relation of local government administrative units to both types of group.

Six types of formal opinion organizations may be distinguished, interest groups, neighborhood groups, ethnic and national groups, the media of public information, political parties, and the local government legislative and governing body or bodies themselves. The relations among groups within any of these types is likely to differ from relations with the other types. The neighborhood groups may have little essentially in common

or in conflict with each other, except to reach agreement in a logrolling tradition so as to form a common front. The interest groups, on the other hand, do not necessarily contend over the division of a fixed fund and invention or design may produce agreement. Differences among ethnic or national groups may be chiefly latent and organized efforts may be directed chiefly to preventing overt conflict from submerging enterprises like renewal. The relations between political parties may be of still different character.

There is enormous variation in the way these various groups make themselves felt in renewal enterprises. In renewal it is necessary to foresee and influence the opinions of people of varying perspective and variously organized. But it is doubtful that any one device for doing so will serve well over time or that the same device will work well under varying circumstances. The variety and change suggests that the devices are transitional. I think the period of transition will continue until we see the problem of public participation in new perspective, namely until we see that the whole set of relationships between a city government's administrative units and the largercommunity are involved.

Perhaps Woodbury is right that cities ought to have citywide election of councilmen, plus a second house for representation of neighborhood views. Perhaps cities with ward representation should have representatives chosen by proportional representation as well. In any case the legislative and governing system of the city as well as its system of commissions and committees is involved in public participation.

We are likely to make wiser decisions on the issues if we know what city government is for and what it is likely to continue to do for the next few decades as one unit within a metropolitan complex and one level within a federal system. Is the chief function to be urban development and renewal?

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11 Errata in Body of Paper:
In reference notations: Insert where previously omitted:
p 6 end of last line: 9
p 7 par 7, end of fourth sentence: 10
Omit:
p 7 sixth to last line: 9
p 8 third line: 13
Move to end of sentence:
p 2: 4
p 3: 5
p 5: 8
In notes:
Note 1 p 325 not 324
Note 2 p 330 not 339
Note 13 Carl J. Friedrich

In acknowledgement: Deil Wright

Other:

p 2 par 2: local views not "the local view"
p 6 par 5 last sentence: rate not "role"
p 6 last par: rigorously not vigorously (I hope)
p 13 par 4: omit "Also"
p 16 par 3: insert outside between "four" and "sources"
p 20 last par of text: omit"present".

The Teaching of Law in the Undergraduate Program

A Paper Prepared for Presentation at the 55th Annual Meeting of the American Political Science Association at Washington, D.C., on September 12, 1959

by

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Public law, particularly some aspects of the law of the Constitution of the United States, is a subject included in the political science curriculum of many or most American colleges. My purpose today is to suggest that the undergraduate can grasp the significance of constitutional law more securely if he also has some comprehension of the nature of law itself -- "private law," if you will -- and of the relationship of the legal process to individual and social aims, values, and activities.

That courses on the Constitution belong in the undergraduate curriculum I would not for a moment deny. I teach one myself. But the more often I teach it, the more I wonder whether, in such courses, the insights that may be gained by the student are not more than offset by the misconceptions with which he may be afflicted. Not childhood prejudices these, but misconceptions about the law and the role of judges acquired in the course of a college education devoted to seeking truth.

The pursuit of truth requires the teacher to shatter a good many inarticulate major premises. In the field of constitutional law, he must set about destroying the old assumptions about the perfection of the basic law and the slide-rule function of the justices of the Supreme Court. Perhaps those assumptions are not as widely shared by high school seniors and college freshmen as they once were.

They still exist, however. I can still see the shocked look on the face of a sophomore when she first realized the implications of Palko v. Connecticut,* that procedural due process of law is whatever five members of the Supreme Court, at any given time, think is fair and just in a given set of circumstances. That judges were human, and that their human wisdom and frailty were factors in the shaping of the law, were ideas which profoundly disturbed her and many of her fellows. I had thought that the writings of Jerome Frank and, more recently, the works of political scientists had by now debunked the law on the one hand and the judges on the other, but I don't believe that this is so. We can probably be thankful, on the whole, that it isn't. As teachers we still have something fresh to impart.

To us, of course, it isn't fresh. The ideas that the Constitution is what the judges say it is, that the climate of public opinion affects their decisions, that the Supreme Court is an organ of government operating, inescapably, within a political framework -- all these are familiar. Call them stale. Stale bread may still be better nourishment than a fresh loaf containing impurities. One obvious peril in teaching public law to undergraduates is that they may come to think that public law, specifically the law of the Constitution, is the only really significant law there is. A greater danger is that the search for freshness sometimes seems to lead us to extreme positions -- positions probably untenable and possibly even absurd. From these outposts of imaginative conjecture we teach the political science of constitutional law.

Specifically two aspects of such teaching have disturbed me. The first is a matter of degree. It is the question of the use of

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*302 U.S. 319 (1937).

interest group theory to explain the judicial process. A good many students are being taught that all politics is group conflict and that our governmental decisions are the end product of that conflict. If Congress is just a cockpit for contending organizations, why is not the Supreme Court the same? Some of us seem to suspect that it is the same. We tell our students, for instance, that in the steel seizure case,* "Six of the justices agreed that the injunction [forbidding the President's seizure of the steel mills] should be issued. ...Only a minority of Congressmen had supported the President.... Thus both a majority of Congress and the Supreme Court majority represented different groups than did the President."** This certainly implies that Supreme Court justices are spokesmen for or "representatives" of interest groups. To me, it seems mistaken and misleading. Of course we can properly take note of the occasionally discernible bias of an individual justice (a bias which may be shared by one or more interest groups) and we should examine what private organizations really do in connection with constitutional cases. Thus the chief impact made by the American Civil Liberties Union is on the courts, because that organization from time to time influences the course of litigation and provides skilful counsel for defendants who have asserted an infringement of their constitutional rights. The Consumers League has never been a particularly influential pressure group, but will always be remembered because it went to bat, in court, on behalf of labor legislation for the protection of women workers: - but for it, there might never have been a "Brandeis

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*Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

**James M. Burns and Jack W. Peltason, Government by the People (Prentice-Hall, Inc., 2nd Ed., 1954) 59. Cf. Jack W. Peltason, Federal Courts in the Political Process (Garden City, L.I.: Doubleday & Co., 1955).

brief," filled with economic and sociological data.* The N.A.A.C.P. certainly played a key role in preparing the way for Brown v. Board of Education,** carefully planning the approach (discouraging an attack on school segregation until gains for desegregation had been made at the less touchy levels of law schools) and especially striving to sway public opinion. It has been suggested that this organization sought to influence the Court by "planting" law review articles favorable to its cause, in the hope that such articles would be read by the Justices. To the extent that this was done, it can hardly be classified as "pressure"; and to emphasize its importance would be misleading for three reasons. First, it could give the student the false impression that authors of law review articles are tools (perhaps bought and paid for) of a clandestine conspiracy. Second, it implies that law review articles were a decisive factor in the Brown case. Third, it obscures the N.A.A.C.P.'s major contribution, which was the unceasing impact (often conveyed through litigation, to be sure) on public opinion of the organization's demand for equal rights.

Groups, then, have their place: - though I think that the effect of court decisions on them is usually much more important than the effect of their activities on the court. I do plead for keeping very clear the distinction between the decision-makers in Congress and the executive and regulatory agencies, on the one hand, and the judicial decision-makers on the other. As between the two, pressure group potential is so disparate in both quantity and quality

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*Muller v. Oregon, 208 U.S. 412 (1908). See Clement Vose, "The National Consumers League and the Brandeis Brief," 1 Midwest Journal Political Science, 267 (1957).

**347 U.S. 483 (1954). Cf. Clement Vose, Caucasians Only: The Supreme Court, the NAACP, and the Restrictive Covenant Cases (Berkeley: the University of California Press, 1959).

that the student should be firmly warned against the notion that all public decisions not only emanate from controversy among groups, but are deliberately shaped to satisfy one or more of the contending groups. He can be told, and should be, that in constitutional cases the Supreme Court is of course aware of competing interests, and often can decide the case only by giving preference to one or the other; but not all the interests are represented by organizations or are even discernible as "groups" in any significant sense, and none of them gains preferred judicial status by exerting pressure, at least in the way that students normally understand that word.*

The other recent and disturbing emphasis, so far probably much more important to professors than to students, is on subjecting the Supreme Court to mathematical analysis. Now let us all agree that Professor Pritchett's pioneering studies in this field were interesting and possibly enlightening. But what had got started couldn't be stopped; and the enthusiasm for reducing the Supreme Court to statistical terms grew until, as we all know, it infected our friends the editors of the American Political Science Review. I speak partly in a spirit of amicable tolerance, as one who goggled a bit over Mr. Kort's sure-fire mathematical device for predicting the outcome of "right-to-counsel" cases,**and partly in humble bewilderment, for I don't pretend to understand higher mathematics. (To me anything beyond the most rudimentary algebra is "higher" mathematics.) But I do not see how mathematics, however accurate,

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*Certain concepts of the public interest may gain preferred status, and perhaps some organized groups achieve their objectives, through the election of a President. Thus William H. Taft privately urged the election of Harding in 1920 because, with several Supreme Court vacancies impending, Harding would appoint sound men -- i.e., men devoted to laissez faire economic principles. (This, I think, is the kind of "political" reference most appropriate in a constitutional law course.)

**Fred Kort, "Predicting Supreme Court Decisions Mathematically," American Political Science Review, Vol. 51, No. 1 (March, 1957) 1.

can either explain or predict judicial conduct. And I feel that there must be something dreadfully wrong with any "index of adhesion" or cohesion or interagreement that purports to prove that the judicial behavior and attitudes of Chief Justice Warren are in all important respects identical with those of Justice Tom C. Clark, or that the latter is "the most powerful justice on the Court...in terms of participation in winning majority coalitions..."* or in any other terms whatsoever. Let us grant the appropriateness of statistics in the study of voting behavior. Let us concede the possible value of mathematical equations as shorthand illustrations of logical criticisms of the rules of the House of Representatives.** But while paying due deference to the intellectual feats of quantitative analysis, let us recognize its limits and, if it is not strictly limited, its perils.

To teach constitutional law primarily in terms of group pressures or scalograms is not to teach it at all. Conversely, it should not be taught as it was in the courses of yesteryear, wherein the justices moved in their mysterious way, performing the wonder of applying to mundane, ephemeral human disputes the intricate principles of an eternal higher law. (Oh yes, the old tendency to think of "law" as super-humanly perfect and permanent lapped over to cover constitutional law, too; in many a classroom the Constitution was long surrounded by a mystic aura.) Whether "law," philosophically speaking, is eternal and perfect or not, certainly the

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*Glendon A. Schubert, "The Study of Judicial Decision-Making as an Aspect of Political Behavior," American Political Science Review, Vol. 52, No. 4 (December, 1958) 1010.

**William H. Riker, "The Paradox of Voting and Congressional Rules for Voting on Amendments," American Political Science Review, Vol. 52, No. 2 (June, 1958) 349.

Constitution isn't, nor are the decisions of the Supreme Court.

The task confronting the student is one of understanding not only what the Supreme Court does but why it does it. We are right in insisting that finding the answers to both these questions requires a comprehension of the political position of the court. But it also requires some awareness of what law itself may be, what legal reasoning is, and how the legal system operates. Judges, however broad and varied their past experience, are lawyers. They may have been senators or governors, but when they go on the bench they think like lawyers. With each other they share, to a large degree, a common background of legal knowledge and craftsmanship. Both as a counterweight to "politics" (which has its vital place, yet can be overemphasized so easily) and in its own right as one key to judicial conduct, some understanding of law and the judicial process is needed by students of the Constitution.

II

The form that an introductory undergraduate course in law should take has been the subject of considerable debate in recent years. The discussion has been sparked, in the main, not by social scientists but by law school professors, and most of the participants both in talking about such a course and in teaching it have been drawn, I think, from law school faculties. Yet all are agreed on one thing: what they are talking about is neither a professional law course nor a pre-professional course designed for future law school students. Quite the contrary is true. Law school teachers have a particular aversion to students being taught substantive law in

college; some even advise pre-law youngsters to avoid the political science department's offering in constitutional problems. Accordingly, they think of the undergraduate course as one "about" law rather than "in" law, and often they emphasize that it is aimed especially at people who are not planning to be lawyers. Some even warn definite pre-law undergraduates away, though admitting that for the student who thinks he might like to become a lawyer but is not sure, the course may have value in helping him to make up his mind.

Without trying to cover all the courses that come under the general heading of courses "about law," perhaps we may profitably glance at a few actual or potential ones. All of them are at best plants of recent growth; the whole field is still decidedly experimental. Perhaps the longest experience has been that at Wisconsin, where a senior course has used the fellow-servant rule as the central focus of the study of development in one branch of torts -- showing the logical reasoning by analogy that underlay the original doctrine, the competing logic that was rejected, the application of the doctrine to early railroad accident cases in this country, its modifications under changing conditions, its abridgment by laws not propounded by judges but enacted by state legislatures. Within such a framework a teacher, according to his inclination, can explore various philosophic approaches to law, challenge the students to think like lawyers by giving them supposititious cases, or speculate, at least, about the predilections of Lord Abingdon and Lemuel Shaw, the conception of the "public interest" as identical with the interests of growing corporate enterprise, and, if you must, the direct influence of the railroad companies and the railway

brotherhoods as pressure groups. Whatever the emphasis, though, the core of the course is the analysis of a series of related judicial opinions.

At Harvard, Professor Mark Howe has for some years given a sophomore "general education" course whichdeals primarily with the growth of the law of defamation, a term defined so broadly as to include treason and subversive activities. Such breadth permits the inclusion of procedural questions, from Star Chamber to the Committee on UnAmerican Activities. But the course also traces developments in the law of libel and slander, and the student is required to read cases. Though difficult, the course is popular -- too big, indeed, for good classroom discussion.

A practicing attorney, Beryl H. Levy, has described his undergraduate course at Columbia (like Howe's a full-year offering) as taking in "the whole world of law as we have it today -- [not only common law but also] administrative law, taxation, collective bargaining, the functioning of the Supreme Court, arbitration, mediation, international law and organization."* A large order! -- but one made feasible by emphasis on those subjects of particular interest to teacher and students, and by a historic-procedural approach in the first semester, a sociological one the second. Other undergraduate offerings, given or contemplated, have ranged from the heavily historical to a kind of amateur behaviorism. In one, the instructor barely refrained from assigning Anatomy of a Murder as required reading. Instead, he gave each of his thirty-six students

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*Harold J. Berman, On the Teaching of Law in the Liberal Arts Curriculum, a Report of a Conference Held at the Harvard Law School (Brooklyn: The Foundation Press, Inc., 1956) 107.

a full written statement of the facts of an accident case, divided them into three juries, charged them and sent them off to separate rooms to deliberate. (All found for the plaintiff, but in widely varying amounts.) A course now in preparation is designed to explore the relationship of law to ethical norms. But in all of the courses, at least of those appropriate in the present context, there is exposure to judicial reasoning and at least an introduction to the professional frame of reference of lawyers and judges.

The lack of a printed textbook has hampered the development of such courses. That gap has been at least partially filled by the recent publication of Harold J. Berman's The Nature and Functions of Law.* Professor Berman of the Harvard Law School has put together an excellent essay on jurisprudential theories with materials concerning procedural fundamentals and manufacturer's liability cases, the latter beautifully illustrating both the confining nature of the legal system and its eventual adaptability to social change. Berman's book continues with cases on some aspects of the law of contracts -- tough sledding for many an undergraduate, I should think -- and almost every aspect of labor law. The latter, it seems to me, is unfortunate. In no instance should an undergraduate course be given in such a way that the student emerges slapping his chest and saying that now he is a lawyer or knows all about any field of law. Furthermore, at the moment labor law is hardly likely to seem as interesting as another phase of public law, that of race

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*Brooklyn: The Foundation Press, Inc., 1958. An earlier compilation of cases and essays has been used for years at Wisconsin; though expensive and cumbersome of format and concentrating on Wisconsin situations, it can be most helpful as a source of materials for the undergraduate courses elsewhere. Lloyd K. Garrison, Willard Hurst, Carl A. Auerbach, and Samuel Mermin, The Legal Process (Madison, Wis.: The Capitol Press, rev. ed. 1956).

relations: - and the latter has the advantage of being so uncertain and unsettled that no student can fool himself into thinking that he knows it all. It is noteworthy that Professor Howe, near the end of his course in "general education," departs from the study of defamation cases and finishes the year with the excitement of the controversial desegregation decisions.

The fact that he does so -- the admixture of a little public law, nay, a little constitutional law with the study of private law, legal philosophy, and legal procedure -- brings us back to the question of the curricular position of any such course. Is it needed at all? If, as I have suggested, it is particularly useful as an adjunct to the more familiar course on the constitution, should the two be combined? Is a course "about law" justified in itself, and if so who should teach it and in what department, if any, does it belong?

III

As political scientists we take it for granted that statutes are within our bailiwick. We study the way they are made, offering courses on the legislative process. We take note of the way they are interpreted, too, although in our teaching about the Supreme Court, the construing of ordinary statutes runs a bad second to the interpretation of the one fundamental statute, the Constitution. And we consider the impact of statutes (including judicial interpretations thereof) on the operations of our social, economic, and political systems. Are the lessons of the Volstead Act exclusively the academic property of historians or sociologists? Can we leave

analysis of the impact of the oil depletion allowance in the sole charge of the economists? Are pending bills to curtail the Supreme Court's jurisdiction fit only for discussion in law school classes? Of course not. These were or are political measures with political results. If, then, we concern ourselves readily with statute law, why not with the common law, with "judge-made" law, as well?

You may say that most judicial decisions are too far removed from what we ordinarily define as "politics" to be worthy of consideration. This is true, I suppose, of most Monday-morning-drunk cases, automobile violations, breach of promise suits, real estate controversies -- and so on and on and on: most decisions, in short. Yet plenty of common law decisions have had political results. Take the fellow-servant cases, excusing the employer from liability. Those decisions led to pressure group activity and legislation. Common law holdings concerning riparian rights caused organized conflict, statutes, and an interstate compact -- leading in turn to more conflict, more statutes, and Mr. Eisenhower's partnership theory of river basin development. And if today, in contrast to half a century ago, statutory law is everywhere pervasive, still the courts in their application of that statute law inevitably judge, at times, between closely competing interests and so influence the course of political action.

Yet "private law" and the legal process are fit subjects of undergraduate study regardless of their immediate impact on legislatures or Presidents or parties or pressure groups. Perhaps it does not matter much where they are fitted into the curriculum, so long as they are placed there. Departmentally they could, conceivably, find a home in sociology or even philosophy, rather than

political science; or they might be part of a core or general education program. But the subject does have a standing in its own right. As Paul Freund asked some years ago, why should a college which exposes the student to Boyle's Law of gases not introduce him, also, to the law which settles many of the major disputes between individuals and segments of society? The common law and the judicial process are not only included in his philosophic heritage but have shaped much of the conduct of his society, even as the gasoline engine has shaped the contours of cities. "The institutions which are central to our civilization -- security of the person, freedom of the mind, ownership, and the intercourse of trade -- and which at the same time are the substance of our daily living, are all dependent on a structure of law."*

Intentionally, I mentioned law as something which settles disputes. I feel that in this aspect it is a subject especially appropriate in an undergraduate curriculum. The college student's presumed objective, and certainly ours for him, is to grow in wisdom; and the most important wisdom he can begin to acquire in college is good judgment. Training in judgment can be well provided by the study of responsible men exercising judgment within a recognized institutional framework and in the face of an unforgiving schedule. Decision-making we all recognize as a useful focus for analysis; the decision-making of judges, taken all together, is vital to the governing of a free society, for essentially its purpose is to bring order out of chaos. The point is missed if, bemused by constitutional history, we think and tell our students to think of law as simply the codification of the pattern woven by

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*Paul A. Freund, "Law and the Universities," Washington University Law Quarterly, Vol. 1953, No. 4 (Dec., 1953) 368.

prevailing social customs and values. Rather it is a process of dealing with breakdowns in that pattern: - for dealing with them, by promptly deciding specific controversies. This necessity for action differentiates the kind of study that I am talking about here, from jurisprudence or courses solely devoted to speculation about the nature of law. "We all recognize," said Judge Charles E. Wyzanski, Jr., at the Harvard conference in 1954, "that legal reasoning is...different from the pure, unadulterated, limitless quest for the truth. The scientist seeks truth without ever feeling pressed to reach a decision, and the lawyer and the judge are in a quite different position. Time is one of the elements also imposed upon him, and the necessity of arriving at a conclusion is the very essence of his calling."*

To say that the undergraduate should be offered an introduction to the understanding of the legal order is not, of course, to say how he should be offered it nor, indeed, whether he can be. As political scientists we all know that curricular changes often depend on the most skilful exercise of the art in which we profess to be expert. And inserting a course into the catalogue is of no use if there is no one to teach it. The kind of course we are discussing here would seem usually -- I emphasize "usually" -- best suited to the teaching of a lawyer or someone trained in the law. Obviously this is why most of the experiments in this field have been tried in colleges which are parts of universities wherein there are law schools. Most of the courses are taught by law school professors. Yet it does not seem necessary to exclude law from the curriculum

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*Berman, op. cit., 23.

of all colleges which have no law school faculty to draw upon. Numerous political scientists have law degrees. In many places an experimental program would be feasible.

Feasible, that is, in terms of an instructor, if he is interested in teaching the subject, but perhaps not so feasible in terms of being fitted into an overloaded schedule. To the problem of the crowded catalogue there are two possible solutions. Drop something else, because an introduction to law is important in itself. Or, if necessary replacing another course, offer the introduction to law as the first part of a sequence, with the familiar "constitutional" course to follow. This is, roughly, what we have attempted at Washington University, though the pressures of scheduling have so far forced the courses to be alternated annually, instead of moving as they should from one semester to the next.

The mention of this combination brings me back to the connection of this introductory course with political science. Let us grant that a case can be made for tying it, instead, to sociology -- possibly, even, to history or philosophy. When this is done, political science foregoes an opportunity to broaden its educational horizon in a very significant direction. It is not the direction, I grant you, in which most of our scholarly pioneers have been traveling in recent years; but it awaits exploration. To change the metaphor, political scientists of weight have massed themselves along the port rail of our ship, which is tending to list noticeably. Seriously, I would not dream of saying to them "sit down, you're rocking the boat," but I would be glad to see a few people move to starboard. I am referring, once again, to the study of constitutional interpretation as part of political science. This study can

be most wisely and fruitfully pursued if teachers and students alike bring to it a zest for learning about law as well as about politics. I agree with Judge Wyzanski that "the teaching of private and public law in the same course has the greatest value...."* There are, as we have seen, other good reasons for dealing with some aspects of "private law" at the undergraduate level, but the one which as a political scientist I wish to emphasize here is the need for increasing our understanding of the Supreme Court. Political analysis, useful in demolishing myths about the Court, can by itself lead to new myths further removed from reality than the old ones; but if counterbalanced by an initial comprehension of the traditions and methods of the law, it can enlighten us about the nature of that politico-judicial body.

I have used the word "experiment," as though all this was something new. Largely untried it is, yes; but new, no. Way back in 1894, in a speech to a section of the American Bar Association, a political scientist called for the inclusion of non-professional law studies in the undergraduate program. Here is what Woodrow Wilson said sixty-five years ago, about "teaching undergraduates to understand law":

"Every citizen should know what law is, how it came into existence, what relation its form bears to its substance, and how it gives to society its fibre and strength and poise of frame.... Law is a branch of political science, and...we need to insist in very plain terms upon its study as such."**

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*Berman, op. cit., 49.

**Woodrow Wilson, "Legal Education of Undergraduates," Reports of the American Bar Association, Vol. 17 (1894) 439.

NOT FOR QUOTATION WITHOUT WRITTEN PERMISSION OF THE AUTHOR

INTERSTATE COMPACTS IN HIGHER EDUCATION - POLITICS AND BUREAUCRACY IN NO MAN'S LAND

by Harold L. Enarson
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Prepared for delivery at the 1959 Annual Meeting of The American Political Science Association, Washington, D. C., Mayflower Hotel, September 10-12, 1959.

> "The negotiation of inter-university cooperation is only slightly more difficult than negotiating with the Russians. But it can be done."
>
> Dean Rusk
> Rockefeller Foundation

In the past decade, thirty-five state legislatures -- sixteen in the South, thirteen in the West, and six in New England -- have ratified interstate compacts in higher education, pledging their states to the sharing of high-cost, specialized graduate and professional facilities in disregard of state boundaries. The premise is that the member states could minimize unnecessary duplication, and provide needed educational opportunities for all their youth by working together through a new device: the regional education agency.

Interstate cooperation in higher education is no longer a vague dream or a tantalizing speculation. The three regional agencies have funds, staff, a variety of programs, and exciting -- if uncertain -- futures. The major policy question is: How can such agencies, new to the governmental scene, best order their activities to accomplish the greatest good? This is a question which goes to the heart of the political and administrative process.

What are the public functions assigned to the Southern Regional Education Board, the Western Interstate Commission for Higher Education, and

the New England Board of Higher Education?[1] How are they organized? How financed? What are their intrinsic tasks, their priorities, their special problems of policy formulation and of public support? Obviously, the three agencies are different; they were established at different times by different people to serve quite distinctive regions. But for purposes of this analysis, differences will be minimized in an appropriate emphasis of similarities.

Very simply, the regional education agencies were organized by governors with the advice and support of university presidents -- and authorized by state legislatures. They are financed by appropriations from the member states.[2] The governing bodies are appointed by the governors of

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1 / For convenience, alphabet designations will be used in this paper, as follows: SREB, WICHE, and NEBHE. The South is the pioneer agency, organized in 1949. Its present membership includes: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

The Western Governors' Conference reviewed a draft of the Western Compact in 1951. That Compact became effective in 1953, when signed into law by the President of the United States. Offices were established in 1953. Member states now include: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming.

The New England Board of Higher Education was set up in 1955; it serves Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

For detailed information, the reader is invited to write to the respective agencies:

SREB, 130 Sixth Street N. W., Atlanta, Georgia
WICHE, Fleming Law Building, Boulder, Colorado
NEBHE, 31 Church Street, Winchester, Massachusetts

2 / Each state in the Southern Compact contributes $20,000 per year to the support of SREB. Each Western state contributes $10,000 per year to finance WICHE. In New England, payments are graduated on the basis of population; the current budget is in excess of $40,000 per year. All three agencies seek and obtain additional monies from foundations. In the West, for example, three of four dollars currently come from foundation or federal agency grants.

the member states, with delegations of equal size representing the states. Each agency has a full-time professional staff (three persons in New England, nine in the West, and more than twenty in the South).

The interstate compacts emerged because various "have-not" states could not provide opportunities for their youth in medical and other professional schools. Every state offers Freshman English and College Algebra; but not every state had -- or has -- medical, dental, and other professional programs. The obvious solution was the pooling of resources and the sharing of costs -- in principle a simple idea, in practice a complicated one. Reading the text of the three compacts, one finds two distinct ideas: that sharing facilities yields economy and efficiency, and that engaging in research contributes to the identification of educational needs for the region as a whole.

In legal terms, the missions of the agencies are simple and minimal. But the expectations are large. The governors and university presidents -- founding fathers of regional education -- spoke broadly, using phrases like "raising the social and economic level" or "providing opportunities for youth" or "making recommendations to the states." They wanted the immediate problems solved, but they also wanted the machinery of regional education to be available for the solution of other problems, by whatever methods of cooperation would be appropriate.

While the assigned functions are broad, the grant of power is extremely limited. In fact, no power of any kind is vested in the regional agencies. They are to facilitate cooperative arrangements; they are not to control, coordinate, regulate, or subsidize. No state submits its educational budget to a regional agency for approval; no college or university is required even to inform the regional agency when it initiates or drops a program. Regional education agencies are, in truth, essentially servants of their member states -- legal entities through which states and institutions can work out programs to mutual advantage. The task is cooperation in its broadest sense; the tool is the method of consensus -- nothing more.

Given similar tasks and tools, the agencies have developed similar programs. All three administer agreements whereby states without schools of medicine, dentistry, and veterinary medicine finance the education of their residents in such schools in other member states. All have done region-wide studies of manpower demands and educational needs in specialized fields -- notably in the health professions -- and through publications and conferences, they have reported their findings to educators, legislators, and the public at large. And most recently, in the face of the mounting crisis in public higher education, each agency has held major conferences involving the triumvirate of power: the governors, legislators, higher educators. Beyond this, each agency has sought by various means to develop cooperative planning and new programs of inter-university cooperation.

In this rapid overview of the regional agencies -- their origin, tasks, and program areas -- one point should be obvious. These agencies have few routine tasks; instead they have a dazzling array of program options, and with these the anguish which comes with hard choices. For example, what really serves the region best? How much shall be invested in conferences as contrasted with printed reports? How much on research as contrasted with public information programs? Is the shortage of health science facilities more urgent than faculty shortages generally? Is it appropriate to assist the states in sharpening the tools of budgetary analysis, or to assist the colleges and universities in resisting such "creeping intervention" into academic matters? Few administrative agencies have such a wide open field for program choices.

In these circumstances, what are the forces which shape the programs of the agency and determine the quality of the organizational product? May I suggest an "ecological" approach, since it illuminates not only what we customarily regard as the "politics" of the situation but the imperatives which shape the form of decision making as well as program choices, and the ultimate organizational product.

Three related phenomena shape and color the public function we call regional education: First, the "structure of the situation," by which I mean the underlying, persisting forces -- the ideas, geography, technology, and institutional forms to which regional agencies must inescapably relate; second, the groups, "publics," and power centers whose favor must be sought and whose opposition must be avoided; and third, the persons and the purposes which have struggled for dominance.

1. The "Structure of the Situation."

Ideas, geography, technology, and the weight of institutions; these are the four long-range determinants of policy in regional education.

Of course, the principal idea is cooperation -- a word, like "Home" and "Mother," which is strong on emotion but weak on content. Everyone is for cooperation -- in the abstract. "Working together," whether in the family, in the community, or the "family of nations" is considered the highest good. What John Kenneth Galbraith calls "the conventional wisdom" dictates that we talk in these terms. But colleges and states, even as individuals, talk one way and behave in quite another, clinging to familiar patterns of self-interest and in fact distrusting any particular cooperative plan. Why? Because cooperation inescapably sets up new relationships, and inhibits in some fashion the freedom of action of a person or an institution. The idea of cooperation, though powerful and appealing, sets in motion countervailing ideas which, though less respectable, are much more likely to be decisive.

Geography provides what John Gaus calls a "political coercion." One example -- the Western Compact for Higher Education embraces states as far removed as Alaska and New Mexico, Hawaii and Montana. The sheer fact of distance is an obvious, continuing difficulty in cooperative programs.

Technology is a third major factor. According to the Compacts, the cooperating states are to "share educational resources." However, technology determines in many ways the areas where sharing is feasible. It would make no sense for a state to abandon the social sciences and subsidize its residents in such programs out of state. But it makes a great deal of sense for a state with small population and limited resources to send its medical school candidates out of state. The appropriate areas for inter-university cooperation are widening rapidly under the impact of technology on scientific research. Can every university have its own giant telescope, its linear and nuclear accelerator, its solar furnace, its marine biology station? Obviously not. The "economies of scale" dictate that only a few universities have such specialized facilities, and suggest that these be used cooperatively.

Failure to exploit technology also limits the opportunities for sharing facilities. An airlines clerk can push a button and immediately obtain accurate information on flights. No such master scoreboard exists to serve higher education. The only way to find out -- say -- who currently offers marine biology or teacher training programs for the blind is to write all the colleges and universities. A system dependent on letter writing is an obvious limiting factor in working out programs for the sharing of specialized facilities.

The weight of the institutions -- their trends carried over from the past -- is the fourth persistent force shaping regional education. Each college or university and each state has an "organization personality" -- its own image of itself and its future -- and behaves accordingly. It would be fatuous to expect a sort of perpetual hunger for cooperation. A university which wants to avoid creating a medical school may eagerly support the student exchange program of the regional agency. But a university anxious to set up a new program, which happens to be a duplicating one -- say in forestry -- will not look kindly upon a regional agency which, when reviewing the needs for forestry education, argues that no new forestry schools are needed.

Obviously, each school and each state will react to the programs and suggestions of the regional agencies in the light of its own image of its self-interest. And that image may be in direct conflict with the regional agency's vision of what is good for the region as a whole. We must remember that the states are real in a way in which "the region" is not. There are no regional legislatures, no regional apparatus of government, no strong bonds of regional loyalties to exploit, and little regional public opinion.

So much for the four persistent forces which make up the "structure of the situation" and shape the world of regional education.

2. The Decisive "Publics."

A consideration of the public at large is not pertinent, because it is a "phantom public," almost wholly unaware of the work of the regional agencies. Instead, there is a shifting collection of special publics, none of which has deep and continuing opinions about regional education. These are: the governors, legislators and legislative agencies, professional groups, university presidents, and state budget officials.

Each of these veto groups has an interest, actual or potential, in regional education. And these interests are frequently conflicting.

The governors and their budget officers want efficient, high-quality performance. So do the legislators and their staff agencies. The professional groups -- whether nurses, medical educators, foresters, or architects -- want advantages; these may be more money, assistance in recruiting or planning, or the "rationalization" of the field by discouraging fresh competition (described as "wasteful, duplicating programs") And the university presidents want either to be left alone, or to be assisted in their battles for new programs and for greater public support. Here is surely a troublesome assortment of conflicting expectations.

Note for example the inevitable conflicts between the political and the educational communities. It is only small exaggeration to say that the political community is preoccupied -- even obsessed -- with economy and efficiency, and that the people in higher education are preoccupied with service, growth, quality, and -- above all -- the need for more funds. Governors and legislators want sharper budget tools and better controls. Educators dread controls and want autonomy. Such conflicts as these, which are endemic in nearly every state, have a direct impact on the attitudes which political and educational leaders bring to issues of regional education.

However, the key "publics" are alike in one respect. For the most part, their interest in regional education is weak and spasmodic rather than strong and continuous. Except on rare occasions, none of these groups provides active leadership or takes the initiative. Yet, their conflicting expectations mark the boundaries within which regional education functions.

As interested parties, the governors, legislators, professional groups, and university presidents have a powerful voice if they choose to exercise it. By the same token, their indifference or hostility -- whether open or covert -- serves as a coercive force. Several examples illustrate the point.

... The Southern governors, without advance consultation with the staff, asked the SREB to do a study of mental health training and research needs in that region. Such a clear-cut request is nothing less than a mandate for action.

... In the West, a single legislative staff member in one state organized enough pressures to commit WICHE to a conference on university budgetary administration, a topic the staff and the universities would have preferred to leave alone at the time.

... Again, both the South and the West have broad cooperative programs in nursing, but none in medicine beyond the student exchange program. This reflects the basic attitudes of the two professions; nurses are eager to work together, but medical educators are not. The attitudes of one group make possible a diversity of regional ventures, while the attitudes of the other discourage similar activities.

The presidents obviously have great influence. For one thing, they are the most knowledgeable, the best informed, the most interested, and hence the most influential members of the governing boards of regional education. ... WICHE has not advertised the benefits of state-wide coordination of higher education, upon which regional education could best build; it has not done so because "coordination" is anathema to most university presidents. A conference for legislators, even one which only describes the various kinds of state coordination, would alienate many Western educators. By the same token, a conference to alert legislators to the crisis in college teaching salaries would be unacceptable to the legislative community.

The point is that the expectations of these four groups -- governors, legislators, professional groups, and presidents -- set the boundaries of regional action.

3. The personalities and purposes.

A handful of purposeful individuals have had a strong impact on the regional programs. Not all governors were qually interested in the formation of the agencies. Without Governor Caldwell of Florida or Governor Earl Warren of California, it is doubtful that either the Southern or Western compact would have been created. In the West, the pioneering efforts of perhaps four presidents in the Mountain States brought the Western Compact into being. And in New England, fewer than five presidents -- who might well have felt differently -- designed that compact.

A history of each of the three agencies could be written in terms of a few strong individuals. The acute skill of John Ivey, the first director of the SREB, enabled the Board to escape becoming a tool for segregation. His broad vision made a lasting imprint on the agency. In the West, three lay Commission members overcame the skepticism of their colleagues in supporting a plea for a region-wide mental health training and research program. On the other side of the ledger, for two years several respected university presidents blocked the staff's proposal for a Conference of State Legislators on matters of higher education. Men of purpose work their will. It could hardly be otherwise.

So much for the analysis of the structure of the situation, the decisive publics, and the role of personality. If this kind of political science analysis is appropriate, it should enable us to point up significant and possibly distinctive, characteristics of the regional agencies as contrasted with other public agencies -- characteristics which condition the administrative behavior of the agencies.

The four major characteristics, each with its special impact on the life of the regional agencies, are:

1. Broad, diffuse mission. Regional education is assigned several rather narrow tasks -- specifically to make regional studies, and to work out contracts between sending states and receiving schools for the exchange of students. But although the specific methods are not written into the Compact, regional education is also expected to encourage a maximum of fruitful interstate and inter-institutional cooperation in higher education.

   The consequences are plain to see. Conflicting expectations make for a constant struggle to define agency goals and program priorities. In the absence of clear-cut, precise tasks, the regional agencies tend to do what they think most important, and what they do best.

2. Operations conducted within a "Zone of Indifference." No one "public" is acutely and persistently interested in the work of the regional agencies. Few sensitive issues are touched and no governmental power is present in any event. For example, a regional agency may urge the need for more selective admission to the state universities, but it does not single out any one university for specific recommendations. For the most part, the work of the regional agencies can be safely ignored, even by those special publics whose interest is touched by any one publication, study, or program.

   The consequences of operating in such a "zone of indifference" are paradoxical. On the one hand, regional education has great flexibility, and can initiate a wide variety of programs. But this hardly makes a Garden of Eden for the staff. For indifference in taking the initiative is accompanied by indifference in coming to the defense of the agency. Regional agencies are highly vulnerable to their critics. One hostile state, or even one

hostile governor or university president, poses a threat. Like the Department of State, regional education agencies have no friendly pressure groups ready to come to their defense. No political party has the slightest interest in regional education. No farm groups or labor union, no Isaac Walton League, or PTA, or Chamber of Commerce cares whether regional education lives or dies.

A further consequence of operating in a zone of indifference is that regional agencies must expend an undue amount of time and effort in selling their program, in informing new governors and new legislators of the work of the agencies. And inescapably, the agencies must search for and publicize visible successes, programs that are simple and easily understood by the public. The student exchange program is a small part of the operations of all three agencies. But it looms large in publicity releases simply because it offers tangible, visible benefits that are easy to portray.

3. Operations conducted within an arena of contending forces. Conflict and cooperation go hand in hand. In a general sense, educators and political leaders share the same goal: high quality education achieved with the greatest efficiency. But this general agreement masks real differences. Inevitably the educator, like the religious leader, presses for more -- for more money, more programs, more services. And the political community inescapably resists these pressures, regarding higher education as only one of the claimants for public funds.

Colleges and universities demand autonomy, that is the right to grow as they please and to teach what they please with a minimum of outside intervention. Against this is the full weight of state government -- budget officers, civil service agencies, purchasing departments, capital planning agencies -- all dedicated to the proposition that the spending of state funds is their legitimate concern.[1] This conflict is present, in greater or lesser degree, in every state, and is mirrored in the work of the regional agencies. For one thing, the governing boards themselves are made up of both educators and lay persons, including legislators.

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1 / Two recent books, written from contrary perspectives, highlight the growing struggle between state government and higher education. The Campus and The State, by Malcolm Moos and Frank O'Rourke (Johns Hopkins Press, 1959) provides a long catalog of abuses by state officials and argues eloquently for fewer controls, less intervention, and greater autonomy for colleges and universities. Scarcely any mention is made of wasteful duplication and academic rivalry. Autonomy of Public Colleges, The Challenge of Coordination, by Lyman A. Glenny (McGraw-Hill, 1959) argues for greater coordination of the colleges and universities, and virtually ignores the dangers which so exercise Moos and O'Rourke.

In the struggle for support, regional education must walk a tight-rope. If the regional agencies simply represent the cause of higher education, they will inescapably be overcautious in publicizing flagrant examples of costly, wasteful duplication. However, if the search for efficiency and economy is pursued too energetically amid the applause of the political community, the regional agencies will surely alienate the educational community.

The experience of the SREB illustrates the point. In the South, the identification with the "governmental point of view" was so complete at one time that SREB lost needed support within the academic community. The Southern University Conference in 1959 passed a resolution charging SREB with "proliferation of activities," "undue expansion," and "unfair" competition," and with the "assumption of responsibility more properly performed by others." While personal jeasousies figured in the censure, the burden of criticism was that the SREB presumed to speak for higher education. Obviously, the presidents of the major universities, especially the private ones, wanted no rival spokesman for higher education!

The consequences of serving these two masters is that regional education oscillates between the two rival camps, occupying a no-man's land of politics and bureaucracy. Total identification with higher education is dangerous; and total identification with the cause of control and co-ordination is fatal. (Where, except in higher education, has American pluralism been elevated to a secular religion -- that of Diversity?)

4. Exclusive reliance on the method of consensus. Like labor conciliation agencies, the regional agencies must rely wholly on the methods of persuasion and consensus. The absence of power dictates heavy reliance on winning consent at all times and among all groups. If the end is persuasion, the methods must be appropriate to that end. As a result, the regional agencies move slowly, carefully, even ponderously -- equipped always with an impressive array of study committees, advisory committees, expert consultants, etc. The clearance process must surely rival in complexity that of a political machine.

   In conducting a study of medical education needs in the West, WICHE set up a large, representative advisory committee. The members were chosen with great care in order to "touch base" with the leading medical deans, certain commissioners, presidents, and state medical societies. Consultant help was obtained from the American Medical Association and the Association of American Medical Colleges, two very respectable outside groups. Help from federal agencies was not solicited; the federal government has "dangerous ideas about medicine"!

   In short, the consequences of exclusive reliance on persuasion is that the regional agencies must organize support for their programs every step of the way. Consent cannot be taken for granted. It must be sought continuously.

It is hardly surprising that the regional agencies are evolving in response to a changed environment. At the outset they were dominated by the conviction that their primary task was to avoid wasteful duplication of high-cost programs. The emphasis was on avoidance of waste. The premise was that if the states took counsel with one another, they need not be pressured into duplicating medical schools, dental schools, and other programs. These notions may or may not have been relevant in 1949. But they are largely irrelevant today.

American higher education is on the threshold of great change, with its course dictated basically by the much-advertised tidal wave of students and the pinch of institutional poverty. Today, the real problem is not one of wiping out small pockets of "wasteful duplication." Rather it is how to encourage "orderly expansion" in the face of doubled and tripled enrollments. I say orderly expansion, in contrast with growth by sprawl, -- that is, with "education as usual."

If this is a valid picture of the problem the states face, it describes the special environment in which regional agencies must operate for the next decade. What does orderly expansion require? It requires at least three things:

(1) a fresh sense of urgency. To date, the plans of higher education promise to be "too little and too late."

(2) a new consensus between the political and educational community. The growing suspicion of one another's motives will not do.

(3) strong planning within each state and each institution. Few states have well-staffed educational planning agencies, and most universities are just beginning to study their own internal operations.

Does this not suggest, even mandate, the definition of new targets of opportunity? I see three such targets: First, the regional agencies should identify the developing manpower shortages in the professions. The West, for example, needs at least three new medical schools. And such shortages should be widely publicized. Second, through research and conferences the regional agencies should help create mutual understanding upon which legislators, governors, and educators can cooperate in good faith. And third, the regional agencies should assist states in strengthening the tools and agencies necessary to plan ahead and to weigh competing needs. And they should help individual colleges and universities in developing good internal management.

These are not targets which can be clearly identified in the charters of the regional education agencies. They are targets which have grown out of the context of the times. Fresh conditions require new responses.

Regional education agencies will survive to the extent that they are skillful in recognizing new needs and in meeting those needs. Adaptation, whether for frogs or bureaucrats, is the first condition of survival.

If regional education agencies occupy a no-man's land, where both adequate surveillance and adequate support are largely lacking, the fault -- if fault there be -- lies deep within the political process. A pluralistic society is one which marches off in many directions simultaneously. The American people rightly sense that universities are tender plants, requiring careful nurture. Excellence in higher education is not to be had by any all-embracing master plan. And yet planning in some form is necessary, lest colleges and universities expand chaotically.

In this sense, the interstate compacts in higher education are political bench marks of a sort. They reveal, simultaneously, the American desire for a rational order and for economy and efficiency, and the faith in persuasion, rather than power, as the rightful tool in the search for a harmonious order. Such faith may be naive, but it has in it elements of grandeur.

"Organizational and Administrative Problems
of the Government's Space Programs"

by

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"Organizational and Administrative Problems of the Government's Space Programs"

Background

Almost two years ago - on October 4, 1957, to be exact - the USSR placed in orbit the first earth satellite to be launched by man. About a month later Dr. James Killian of the Massachusetts Institute of Technology was appointed the President's Special Assistant for Science and Technology. Having also been designated Chairman of the President's Science Advisory Committee, Dr. Killian and the Space Science Panel of that Committee immediately began to develop plans for the recapture of technological leadership in the space sciences.

As soon as the outlines of an expanded and accelerated space program emerged from the deliberations of the Space Science Panel questions about how the program should be organized and administered began to come to the fore. Toward the end of 1957 Dr. Killian approached Mr. Maurice H. Stans, Director of the Bureau of the Budget, with the request that the Bureau take the leadership for the organizational and administrative planning of the space program. The Budget Director agreed with Dr. Killian's proposal and assigned responsibility for the work to the Bureau's Office of Management and Organization.

The Bureau's management analysts found that they had been handed a responsibility - and an opportunity - for which no close parallel could be found in the recent history of our Government. For many years organizational and administrative planning in the Federal Government had mainly involved efforts to improve the framework in which old programs were conducted, or to equip agencies to assume new responsibilities closely allied to functions they were already carrying out. Even where a program had been new to our government it was similar to programs already existing in other countries with political and administrative systems which made their experiences relevant and useful guides to U. S. organizational and administrative planners. Here, however, the management analysts were being asked to plan an organization and an administrative system for a program so new, so unique, that even its principal purposes - to say nothing of its detailed characteristics - were the subject of speculation and debate. Were its objectives to be primarily civil or primarily military? Should the American people expect tangible benefits from it or were its benefits likely to be in the form of enhanced national prestige? Would it be a program which could and should be administered as a single entity or, to use an extreme example, would its characteristics be such that it might simply be added to the many research purposes for which the Government was making grants and letting contracts?

The scientists had some difficulty in communicating with the management planners. The latter had read too much, or perhaps too little, science fiction in the past and were also bemused by what they were then reading in the press, hearing on the radio, and seeing on television. It required the application of special mental discipline to be sure that they were planning for the organization and administration of the program being officially conceived and not for the even more fantastic projects being speculated about in public.

Ultimately the management planners comprehended that they should plan for a program which would be civil in character; would be aimed principally at the extension of man's knowledge of the earth, the solar system, and the universe; would involve the launching of many types of earth satellites and later would include explorations of the moon, Mars, Venus, and other planets; would probably produce its first tangible benefits in the fields of radio and television transmission and meteorology; would for some time require the use of propulsion, guidance, tracking and communications systems developed by the military services but later would probably need to acquire its own capabilities in those fields; and, finally, would supplant those general purpose space research projects already initiated by the military services but would leave the Department of Defense fully responsible for any military applications of space technology.

The Organizational Problem

By January of 1958 widespread interest had been aroused in the choice of the agency to administer space programs, and a number of alternative arrangements had been publicly advocated. Numerous bills were introduced in the Congress to assign the program to existing agencies (for example, the Atomic Energy Commission) or to create new agencies for the purpose (for example, a Department of Science and Technology). Late in the month the National Advisory Committee for Aeronautics released a report proposing a national program of research in space science and space exploration and calling for an expanded NACA to provide the principal leadership in space technology.

The principal organizational alternatives examined by the Budget Bureau's management planners were:

1. Utilization of the Department of Defense. The Department of Defense was doing most of the then current work on missiles and satellites; was employing the bulk of the scientists and engineers in those fields either directly or through its contractors; and was experienced in working with and utilizing the facilities of the NACA.

Utilization of that agency was not recommended, however, because such an arrangement would be interpreted as emphasizing military goals; the civil space program was expected to produce benefits largely unrelated to the central mission of the Defense Department; that Department's military functions were already taxing its executive and technical personnel to such an extent that additional assignments to the department should be made only when there was no other available alternative; cooperation with other nations in international space matters would be hampered; and adequate civil-military cooperation could be achieved without assigning the program to the Department.

2. Utilization of the Atomic Energy Commission. The Atomic Energy Commission was considered because it was a civilian agency with great competence in directing scientific research and development projects; it was experienced in managing research contracts and in working with the military agencies; and it was then developing a nuclear rocket engine which might eventually be used to propel space vehicles.

Utilization of the AEC was not recommended, however, because it was concerned chiefly with the use of a single form of energy (it was expected that chemical propellants, not atomic energy, would be the chief power source for space vehicles for many years); the Commission had had no experience in most aspects of the design, construction and testing of space vehicles; and it was believed that the space agency should be headed by a single executive, whereas the Commission was headed by a 5-man board, an arrangement which it was not considered desirable to disturb for a number of reasons having to do with the character of the atomic energy program.

3. Creation of a Department of Science and Technology. A Department of Science and Technology would have provided a civilian setting for the civil space program and it would have given that program and any others assigned to the Department the prestige and accessibility to the President associated with departmental status.

The arrangement was rejected principally because it was believed that science and technology, of themselves, did not provide a sound basis for organizing an executive department. Another important reason was a concern that, if it could be done at all, it would take so long to establish and organize such a wholly new department that the civil space program would be delayed interminably.

4. Utilization of the National Advisory Committee for Aeronautics. NACA was a going Federal research agency, with a large scientific and engineering staff; it was in position to expand its program and increase its emphasis on space science with a minimum of delay. NACA had a long history of close and effective cooperation with the military services. NACA was a civilian agency and widely recognized as such. NACA's aeronautical research had been progressively involving it in technical problems associated with space flight, and the construction program it then had under way was designed to be useful in space research. It had done research in rocket engines, it had developed materials and designs to withstand the thermal effects of high speeds on entering the earth's atmosphere, it conducted multi-stage rocket launchings and in the X-15 project it had taken the leadership (in cooperation with the military services) in developing a manned vehicle capable of flights beyond the earth's atmosphere. It seemed unlikely that it would be possible to define practicable boundaries between the missile and high performance aircraft research of NACA and space vehicle projects. Moreover, it appeared likely that, left to aircraft and missile projects, NACA's mission would suffer through inability to attract and retain the most imaginative and competent scientific and engineering personnel.

The recommended solution to the problem of selecting an agency to administer the civil space program was to use the NACA. That recommendation, as everyone knows, was accepted by the President and the Congress. But it should be emphasized that there is no such thing as a perfect solution to a major problem of government organization. The recommendation was not that the civil space program simply be assigned to a renamed NACA in addition to its other functions. Rather, it was that a drastically different and much more powerful agency, to be called the "National Aeronautics and Space Agency," be erected upon the foundation provided by the NACA. Such an approach was believed to be necessary because the NACA: was a multiheaded agency, literally headed by a large committee; was experienced in managing a program much smaller and simpler than the contemplated civil space program; had limited contracting authority and inadequate experience in administering large scale developmental contracts; in the direct employment of civilian personnel had no special flexibility which would enable it to attract additional personnel in the necessary numbers and qualifications; had been involved chiefly in research involving air breathing aircraft and missiles and lacked staff experienced in some fields related to space flight such as electronics and space medicine; and, last but by no means least, was without experience in administering a politically supercharged program such as the projected civil space program had already become.

Administrative Problems

Having arrived at a decision to use the NACA in order to erect the civil space agency, several major administrative problems were foreseen and plans were laid to cope with them by either executive action or legislative proposals. Those problems included:

1. As has already been noted, most of the scientists who had done the most work on rocket engines and space vehicles were employed by Defense Department agencies and contractors. A means was sought to utilize those experienced personnel which would not unduly impair the capacity of the Defense Department to continue the defense related aspects of missile and space activity. Several provisions of the bill developed by Budget Bureau staff were aimed at that problem: that part of section 6(a)(6) which authorized the civil space agency to use the services, equipment, personnel and services of other agencies; section 6(a)(10) which authorized the employment of retired military personnel; section 6(a)(11) which authorized the detail to the agency of members of the armed services; and section 8 which authorized the space agency, with the concurrence of the head of the other agency concerned and with the approval of the President, to transfer to itself any function relating primarily to the functions of the space agency.

2. The NACA was not in a position to push ahead with the immediate demonstration projects necessary to protect the nation's world prestige. By Presidential direction the Department of Defense undertook to conduct such projects.

3. Some key scientists were known to be unwilling to work under the limitations imposed on civil service agencies, particularly those involving compensation, and to be advocating that the civil space agency be required to use one or more contractors to carry out the civil space program. While it was believed that the agency should have ample authority to contract for so much of its work as might be desirable and appropriate it was contemplated that it would be in the public interest to conduct certain research, as well as other work, in government-employee staffed installations. Section 6(b)(2) of the executive branch bill was intended to equip the agency to deal with its compensation problems by authorizing the agency to fix and adjust the salaries of its employees at rates reasonably comparable with prevailing rates paid to non-Federal employees for similar work. Section 6(b)(5) was designed, in conjunction with other applicable laws, to give the agency the necessary contracting authority.

4. Difficult and complicated relationships with the Department of Defense seemed to be inevitable for a considerable period of time. Avoidance of overlapping between the civil space program and the work of Defense on military projects was considered especially important. It was thought that the problem could be minimized if Defense, in a manner analogous to the practice followed with the NACA in developing aircraft and missiles, made use of the civil space agency for supporting research and development on military space vehicles. Fairly frequent Presidential intervention in this area was foreseen as being unavoidable during the early years of the space program.

Conclusion

The National Aeronautics and Space Act of 1958 was signed by the President on July 29, 1958. In enacting the legislation the Congress accepted the principal features of the proposals of the executive branch, which were contained in the President's special message of April 2, 1958, and identical bills which were introduced as H. R. 11881 and S. 3609, 85th Congress. The Congress selected different methods than those proposed by the executive branch to permit functions to be transferred from the Department of Defense to the space agency and to enable the agency to compete for scarce managerial and scientific talent. The Congress also made a number of other charges in the legislation, perhaps the most important of which was the creation of the National Aeronautics and Space Council. But it is fair to say that the main organizational and administrative arrangements under which the civil space program is being administered are those which were originally projected by the management planners of the Budget Bureau. Because of that fact, and because of the novel character of the undertaking as described earlier, an unusual opportunity exists to evaluate critically, in the light of a year's experience, a major piece of management planning. Such a critical evaluation is heartily welcomed.

The decision-making processes of the executive branch (which in this case involved, in addition to the heads of the several affected agencies, the President, the Director of the Bureau of the Budget, the Special Assistant to the President for Science and Technology, and the President's Advisory Committee on Government Organization) have necessarily been omitted from this paper. An earnest attempt has been made, however, to lay bare the work of the professional staff of the Budget Bureau who had the privilege of participating in the organizational and administrative planning for a most unusual and exciting program.

THE PROCESS OF CONSTITUTION MAKING IN LATIN AMERICA

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Latin American as an area would yield to few if any other regions of the world in its devotion to what it considers the constitutional process and, indeed, the supremacy of constitutions in establishing and ordering the political life of the several states. If the mere number of excursions into the practical exercise of constitution-making were to be considered significant--which it probably is at most only in a limited way--it might lead to the conclusion that the Latins were affected by some form of legomania. A compilation of Latin American constitutions published a little more than a decade ago indicated that as of the beginning of 1948 the twenty states had written a total of 200 basic laws since their respective achievements of independence. Several additional ones have since been drafted.

This is evidence, or at least a straw showing the direction of the wind, but it needs to be evaluated. By itself it means little.

The segment of the highly stratified society which inherited the task of writing the new constitutions at the time Latin American independence was won was the creole, and within the creole fraction the pensadores or philosophers. They were a well, even if somewhat artificially, educated group and their intellectual interests and enthusiasm were beyond question.

The chief intellectual inheritance of the pensadores was Gallic. They admired and imitated the French penchant for logic and symmetry. In the absence of any large or significant experience with the hard realities of government through an apprenticeship during the colonial period they could make of constitution-writing only an intellectual exercise and in it philosophizing, and the devising of beautifully symmetrical even if impractical and unrealistic governmental machinery.

"The early constituent assemblies," I have written elsewhere, "were devoted to symbol words--the French trinity of liberty, equality, and fraternity, of course, and federalism, democracy, unity, and others-- and these were clothes with an almost sacramental virtue; in other words, the approach was ritualistic. . . There long prevailed the unconscious feeling that a written constitution was the panacea for all political ills, and that if one proved unsatisfactory all that needed to be done was to draft another."

The situation in the early years of independence was, then, roughly this: almost all sovereign units in Latin America were controlled, actually, by dictators, most of whom took the guise of a caudillo. The turbulence of the time, the lack of experience in democratic self-government, the uncertainty that Spain or some other European state would not again plant an alien flag over much of Latin America, the physical facts of a general frontier rawness and an absence of adequate transportation, all these and other factors scarcely permitted any other condition to prevail.

The early dictator thought, spoke, and acted in terms of force, violence, a complete self-assurance, and an impatience with the constitutional or other form of deliberative process. He distrusted and sometimes feared such processes partly because he was unfamiliar with them. Government was personal and the ruler's hold over his people was primarily charismatic, not rational. The personalistic element of the situation, though to a less extent the irrational one, was an inheritance from the colonial and precolonial periods; the impressive and in some ways logical institutional and constitutional system of the colonial era had largely broken down with the severing of Spanish authority in her erstwhile colonies but there were left the attitudes and tendencies which were characteristic and indeed almost inevitable under the circumstances.

The dictator, nonetheless, usually showed a profound respect, sometimes sincere, sometimes hypocritical, for the document known as a constitution. Several reasons probably contributed to this: the intellectual presitge enjoyed in the status-conscious socity of the day by the pensador who wrote the document, the frequently happy and almost always stimulating experience of France and the United States in experimenting with written constitutions, and (on the more cynical side) the dictator's occasional realization that a constitution would give his regime a facade of legality and respectability which it might otherwise lack. It was only the exceptional dictator, such as Francia and, even to a greater degree, Rosas, who attempted to govern virtually without benefit of constitution.

Latin American public life of the time, then, displayed the diametric and usually immiscible contributions of the caudillo and the pensador. It was not often that the man of action was at the same time politically articulate, literate and well balanced; more typical were such extremes as the caudillo Mariano Melgarejo and the pensador Juan Egana. This basic divergence between the important political sterotypes did not prevent the inheritance and continuation of several characteristics of political life. As I have described them previously:

". . . unitl the last generation or so certain aspects of the historic political scene in Latin American remained almost undisturbed: (1) Power was centered in the executive branch, more specifically in the preseident, and, despite constitutional lip service to the principle of separation of powers, legislative and judicial machinery in virtually all instances remained abysmally and pathetically subserivent to the executive. (2) Even in those states which nominally had a federal form of government, this principle, too, was similarly honored in the breach and authority was concentrated in the national officials, which is to say expecially the president. (3) The role of government remained formalistic, i.e., it involved, usually with haphazard performance, the minimal classic functions and showed little or no adaptation to changing economic and social circumstance. (4) Conversely, the attitude of most people toward government was that it was remote, alien, and even antagonistic, and that they had no responsibility for it or proprietary interest in it."

A search for the reasons for this peculiar situation is, I think, important. They seem to me to lie, at least in part, in the dichotomy that existed between institutional organization and reality in nineteenth-century Latin America. The political institutions and practices which prevailed were of European, expecially Spanish, origin and importation. The same was true of economic and social institutions, the religious organization, the educational system, et cetra. The "official"

culture was an occidental overlay which suited the needs of the very small fraction of creoles who dominated society but meant little to anyone else.

The mass of the population in most parts of Latin American was Indian, mestizo, Negro, mulatto, or in other socio-ethnic strata which were in practically all ways widely removed from the ruling elite. It has been said that about the only officials with whom the Indian came in contact were the tax collector, the recruiting officer, and the policeman and it goes without saying that he was unlikely to develop a close and automatic affection for any of them. Government was of the whole people; it certainly was not by them nor, until much later, even for them.

Being government of the people, it was scarcely recognized in the nineteenth century that is was in many countries a highly unrealistic government. It was readily seen to be, in a typical situation, undemocratic, harsh, insubstantial, and unimaginative but no so readily identified as being almost wholly unsuited to popular needs. It was quickly noticed, of course, that written constitutions--they are also called "paper" or nominal constitutions--departed from the realities of politics and Latin American states were frequently cited as offering examples of Bryce's apt terminology of the written as contrasted to the "real" constitution is perhaps more pertinent for Latin American application.

Now, any government will quickly develop an unwritten constitution. The United States has long had one; I dare say that even the young French Fifth Republic is in process of adding that encrustation of relationships, practices, and even offices, not defined or perhaps even implied in the written document, which we think of as the unwritten constitution. I believe we can make a valid and useful distinction between the divergences we find in most western countries and those encountered in Latin America. It is as if the written constitution for the United States or most other western countries were a cone, sharp in outline and specific in size, and the unwritten constitution were a larger and vaguer cone enclosing it. The inner and more tangible cone is not composed of substance unrelated to that found in the outer cone; the material and relationship of the latter is merely supplementary. In the case of the Latin American analogy, however, the one cone is not superimposed on the other; they are separate from each other and sometimes well removed. In terms of color, texture, form, size, and content they may bear little relationship to each other.

Professor J. Lloyd Mecham, the dean of political scientists concerned with Latin America, is the author of a recently published, succinct and stimulating article dealing with the differences between "normal" and "real" Latin American constitutions. His discussion points out with adminrable charity what is found in an average written constitution and how if differs from the facts of political life in Latin America. The author's conclusion is that "there are no constitutional formulas which, however well-suited to any practical situation or peculiar environment, will of themselves inaugurate a democratic regime. . . . Those requisites of a democratic society: fair play, tolerance, self-discipline, responsibility, human dignity, majority rule but respect for the minority, a spirit of compromise, and respect for the rule of law, are the qualities of a democratic citizen which have deep roots in his historical past. These qualities.. . . cannot be legislated into existance [and] have not, unfortunately, prospered in the soil of the Latin American's historical past. Nor after 140 years of tortured experience in self-government does the present status of democratic achievement in Latin America augur much improvement in the foreseeable future."

Students of Latin American and comparative politics can accept Professor Mecham's conclusion, I believe, and are certainly indebted to him for his able analysis of the sorry situation prevailing in Latin America. It may be in order, however, to speculate somewhat about possible circumstances or conditions which might in the future significantly alter what has prevailed, with few exception, for almost a century and a half in the picture of Latin American constitutionalism and constitutional practice.

It is too much to expect--and indeed no one wishes--that Latin American constitutions which are written in the future will either quickly or slowly become undemocratic in their prescriptions just so that they more closely conform to reality. This, of course, takes into account only one aspect of the picture of change, but it is the one which immediately concerns us. The only Latin American constitution with which I am familiar which took such a course in considerable degree was the Brazilian basic law of November, 1937. That interesting document gave lip service to the fiction of popular control by proclaiming in the first article that "Political power emanates from the people" but in the very next phrase obliquely withdrew this reassuring conclusion by adding that it "is exercised in their name and in the interest of their well-being, their honor, their independence, and their prosperity." Depsite the fact that the third article conventionally maintained that "Brazil is a federal state", the actual specifiecs of assignment of power as included in the rest of the detailed document so concentrated authority in the hands of national officials, and especially the national executive branch, that in reality federalism, not to mention democratic government, became a fiction rather than a fact, to the extent that the growing dictatorship of Vargas had not already abandoned both principles.

Of course it might be qute correctly contended that this constitution of 1937 was much more in line with reality, with it concentration of power in the hands of the president at the expense of either legislative or popular control over it, than a more typically drafted document would be. By the same token, however, the very novelty (virtually the uniqueness) of the Vargas venture in constitution making simply emphasized the conclusion that the conventional design of constitutions would scarcely ever be departed from in such fashion.

If the mountain of constitutional content and form will not thus go to the Mahomet of political reality in Latin American is there much likelihood that Mahomet will consciously or unconsciously, visibly or invisibly, to to the mountain? I think the chance of it is good. Let us see what this involves: In terms that discard the figurative language of the preceding sentence it means that I belive that conditions, political and other, are likely sufficiently to change in Latin American over an indeterminate time that the traditional sort of constitution which has been written in the past and which will probably continue to be written in the future will be more in accord with those changed conditions without the necessity of basically altering the type of document itself. This seems to posit an assumption that many will doubtless be unwilling to accept, vix., that a particular genre of written documents will show more permanence than the underlying conditions of life and society in a large segment of the world. It is argued that the qualities of the inner man are so deep-rooted and so little susceptible of change by fiat that the basic situation cannot be altered. But I believe it can also be argued that conditions affecting human society can and do so fundamentally and radically shift that there is no recourse for humankind but to conform to its changed environment. An illustration

may be found in the impact that the Industrial Revolution had on mankind in, say, the eighteenth cnetury and after. Prior to it many of the ways of life, and certainly the totäl population of the western world, had remained little changed for centuries; after the impact of the Revolution was felt much of the organization of society had to be altered, a vast increase in population occured within a few generations, and, in the political sphere, the relati nship of government to governed inevitably had to be rethought and realigned.

In Latin American the Industrial Revolution is now introducing a ferment of significant proportions. A Sanitary Revolution has already taken place. The combination of the two (plus, of course, other circumstances) has resulted in a population explosion which, experts say, will give Latin America a population double that of the United States and Canada by the end of this century. It is inconceivable that a form of government which would serve the slow tempo of a pre-eighteenth-century society, whether colonial or independent, could serve for conditions in the later half of the twentieth, complicated, as they undoubtedly will be, by the advent of an atomic age. Latin America is no longer in the backwash in which it slowly eddied prior to World War I. Granted that no Latin American state is a first-rank power in world affairs, it is still undeniable that the area as a whole and virtually every individual state in it are to a far greater degree participants in international politics and economics than was true a half century ago. There are no more hermit Paraguays, as in Francia's day--nor can there be.

Latin American societies have been, by and large, notoriously unintegrated (and of course I am not using the term in the limited and technical sense in which it has been popularly employed in the United States in recent years). Their constitutional patterns, however, were very largely borrowed from countries, e.g., the United States and France, which enjoyed a far greater degree of integration (as used in this broader sense). If, then, social, economic, political, cultural, and perhaps other sorts of unification were to be introduced in greater degree in Latin America it follows that conditi ns would result which would presuppose a situation more in harmony with that on which the traditional constitutions of the area are based.

I believe that integration is likely to come--slowly and erratically--to much of Latin America, though I will not venture to predict the time required for it. May I suggest briefly several factors which I think will promote internal fusion and two which may retard it, or, in the case of one of the, a malign fate so willing, would prevent it. In their order of importance, as I see it, integration in Latin American countries would be (and is being) advanced by (1) economic change, (2) the spread of literacy and education, (3) greater mobility of populations, (4) a more rational role for the "army" and (5) a potentially changed position for the Catholic Church. The negative factors, again in decreasing order of importance, I would list as (1) communism, and (2) a possibly unwise choice of policies by the United States government. These factors may deserve some slight amplification insofar as they are applicable to the subject under discussion, i.e., the process of constitution making in Latin America.

Economic change, now at flood tide in Mexico and Brazil, for example, involves not only industrialization but also the accumulation and domestic use of greater amounts of capital, diversification of agriculture and other aspects of the economy,

growth of internal commerce relative to foreign trade, increased productivity and rate of productivity, and other aspects. In its various ramifications it would seem to be the factor of greatest consequence in tying together more effectively the discreate parts of any given Latin American country.

Literacy and education are not synonymous but are obviously related. An illiterate person is not necessarily excluded from use of all media of communication in Latin America--the readio is probably a relatively more importat medium there than in the United States--but he is undeniably limited in the contribution he can potentially make to the life of his community; he perforce dwells in a cultural and other sorts of isolation which not only makes him lonely but also keeps his country from making its best use of him. But literacy rate show spectacular improvement: a recent compilation indicated that only two Latin American countryies had rates lower than 30 per cent and in one of those is missed that figure by only three-tenths of one per cent; nine countries had rates higher than 60 per cent. Educational programs are becoming more realistic, practical and popular.

Population mobility, both physical and social, is improving. The former kind, in view of bettered highway and airplane facilities, needs no elaboration; it permits the actual removal of estancia-bound persons to cities and contributes to an intermingling of population which would otherwise be impossible. Social mobility is probably more important. The erosion of the plateau formerly occupied almost exclusively by the landed aristocracy means that the tightly knit social bonds which formerly held an estancia population together are now relaxed and the physical removal of the under-privileged and underpaid workers is facilitated. Industrialization and other changes in the cities permit an ascent on the socio-economic ladder which previously would have been difficult or even impossible.

The military bids fair to be "whittled down to size", at least psychologically, in various countries. This may be denied by those who read only the big headlines made by army activities in one or another Latin American country, but I still believe it will prove true in the next two or three decades. The course of the Mexican army in the past quarter of a century is an omen. Other forces, especially economic, are deflating the military's traditional importance and weight and fording it into a more rational role. Its previously abnormal position as a state within a state in many countries could not but retard integration; the modification of that position should operate in the opposite direction.

I do not mean to suggest that the Catholic Church will cease to be a conservative institution and influence in Latin American affairs but rather that the breakdown of the traditional social pattern is bringing it re-examine its position vis-a-vis the population and areas which it has so long religiously dominated. This re-examination was foreshadowed by the encyclicals Rerum Novarum and Quadragesimo Anno. The recent attitude of the Church in Latin America, or at least that of certain members of the hierarchy, has been one of adopting a more active program pointed at solution of the social and economic problems of the peoples. A cautious surmise is in order that if continued and expanded this will contribute to integration.

On the other hand, on or two factors in the picture could operate in a contrary direction. One of them--and "would" rather than "could" is the auxiliary verb here needed--is communism. It is belaboring the obvious to point out that communism, un-

til it were taken over in any Latin Amercan country (as it came dangerously close to doing in Guatemala), thrives on setting class against class, on stirring up friction between Latin American regimes, on, above all, arousing general Latin American antagonism toward the United States. Disintegration is almost a consistent professional objective of Communist operations in Latin America.

Latin American politics is highly allergic to any presumption of interference by the United States and the policies of this government hence need to be very carefully considered indeed as they apply to the other American republics. The sensitization of the thin Latin American skin had many illustrations in times past, though more recent United States policies have been better conceived. Planning should be on a long-range basis, however, so that the breaking of a crisis, such as that in Guatemala a few years ago, will not prompt emergency measures which have after-effects that may be perhaps contrary to the permanent objectives of the United States government in Latin America.

On balance, the several plus and minus factors I have suggested would seem almost certainly to point toward a progressively greater integration in Latin American social and economic organization. It will not be a quick transformation. We will see only individual trees and not until long afterward will be become aware that the appearance of the whole forest has changed.

The erosion of the social and economic mesas and the filling in of the barrancas will necessarily have political effects. As it stands, the only essentially new trend in Latin Amercan constitution making thus far has been the spelling out of popular social and economic rights, in which connection we usually regard the Mexican constitution of 1917 as the prototype though the Mexicans themselves would assign major credit to their earlier constitution of 1857. This trend is of course merely in line with one which has been world-wide since the first World War. The amplification of these parts of new Latin American constitutions, sometimes in great and really legislative detail, was not in conflict with the democratic and usually unrealistic political structures inherited from earlier generations. Let us admit, however, that when detailed socio-economic bills of rights were written into such constitutions as the Nicaraguan it was only an imitative gesture and probably a cynical one at that. In several other instances we must realistically recognize that the advanced prescriptions represent merely ideals not yet attained in practice, as has so often been true in Latin American constitution writing.

As economic and social organization in at least the more advanced Latin American states come to approximate what has been achieved in leading countries of the western world it follows that the constitutional pattern of political structure adopted in imitation of what in general prevailed in the latter countries will be less distant from reality than has heretofore been true. Mahomet will have gone toward the mountain.

Indeed, this change is already dimly in evidence. No Latin American constitution provides for or even sanctions, for example, a permanent continuance in office by one party, faction, or clique. Yet it has always been assumed that, barring a political miracle, the ins would stay in and the outs would indefinitely keep that position; it would be a maive president indeed who would not see to it that he or a hanpicked

sucessor succeeded himself. But let us look at the record: Instances a few decades ago in which an opposition party or presidential candidate was elected, counted in, and allowed to take office were rare indeed. They occurred in Argentina in 1916, in Chile in 1920, and in Colombia in 1930, though in the second of those cases the circumstances were so unusual as to recall the disputed United States presidential election of 1876. In the last decade and a half, however, eight countries--Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Peru, and Uruguay--have offered examples of the sort. It is worth noting that seven of those countries (Peru was the single exception) ranked in the top half of the list of Latin American states as evaluated in 1955 by a panel of specialists in terms of democratic achievement. The correlation is significant. It also suggest that economic pressures are registering, that the military could be assumed to be less politically minded or less inclined to overt action, that political literacy and education are improving, et cetera. The greatly increased incidence of elections of this sort is at least prima facie evidence that some of those pers nal qualities of a democratic society such as Professor Mecham so well catalogued--tolerance, self-discipline, respect for the minority and for the rule of law--are beginning to have their innings in Latin American politics.

Let us now look at two of the current constitutions of Latin American states as case studies to see whether and how far this trend toward increasing susceptibility to economic and social change in one country or another is progressing. The two are Uruguay and Paraguay, neighbors with (at least to the layman) confusingly similar names. In the previously mentioned survey made in 1955 twenty specialists ranked them as respectively first and last among the Latin American states in terms of democratic achievement; indeed, in similar surveys made in 1945 and 1950 they had also been ranked first and twentieth each time. If the application of the single factor of democratic attainment, determined by a somewhat complex formula, has validity if projected to other phenomena, the contrast between these two Latin American states may tell us something about the process of constitution making in the area.

Paraguay's is a short constitution, drafted in general and sometimes vague terms; Uraguay's is long and detailed; the number of articles in the two is respectively ninety-four and 332. Neither the length nor the number of articles has much significance except insofar as it may indicate that the one is relatively unresponsive to popular pressures for dealing with matters constitutionally, and other much more resonsive. The Paraguayan constitution, drafted in 1940 and hence more than 150 years younger than that of the United States, still has similarities in subject matter to that of its far northern sister republic, and even a few resemblances in specific phraseology. It would be difficult to imagine two background situations as those in Paraguay and the United States. The fact that the constitution of the former state has any resemblance at all to that of the latter simply points up the unreality of the former document. Uruguay and the United States are more nearly comparable in terms of progress but the constitution of the smallest south American country bears no resemblance to that of the United States--it is far the product of its own environment.

The bill of rights in the Uruguayan constitution is much more detailed than that in the Paraguayan; the latter basic law has references to social security in three articles whereas such provisions in the Uruguayan document are legion. Futhermore, these matters of personal and social protection as dealt with in the Uruguayan constitution give no impression of having been written in a vacuum; those in the Paraguayan

law do convey that feeling; typical of the latter is the pathetic provision in Article 22 that "Every Paraguayan home should be located on a piece of owned land."

It is perhaps of some importance to try to determine (though it must be partially an arbitrary evaluation) how much of the respective constitutions is the product of peculiarly Paraguayan or Urguayan circumstances, problems, or developments. In the case of the Paraguayan low only seven articles or parts of articles (less than a twelfth of the whole number of articles) bear a discernible relationship to the Paraguayan social, economic, or cultural landscape. Four of them involve matters dealing with the Church-State relationship and are of little substantive importance. One (Art. 5) simply states that Asuncion is the national capital and the location of govermental authorities. The only one of conceivable significance is Art. 62 which, in defining the compostion of the Council of State (not an agency of great importance in the actual administration of the country), prescribes that among its members shall be "two representatives of the farming and cattle industries", a presumptive recognition of the importance of such activity in the economy of the country. In terms of voting strength on the Council of State the farming and cattle industries are thus incidentally put on a par with "the military institutions" inasmuch as the army and navy each have one representative!

In general, the Paraguayan constitution sounds as if it might have been the graduation exercise of some student in a high-school class in constitution drafting. Or, except for its commendable lack of ornate verbiage, it might have been written by a pensador of a century and a half ago. It contains precious little evidence of having germinated in the good earth of the Paraguayan plains.

The Uruguayan law, by contrast, contains some eighty-six articles or parts of articles, more than a fourth of thw whole number, which recognizably stem from situations or problems more or less peculiar to the country. A few illustrations will suffice: (1) Autonomous entities, as they are often called, are not unique in Uruguay but that country has developed and used them to a greater degree than any other in Latin America; they are dealt with in thirty-eight articles of Uruguay's constitution. (2) Political parties are an inevitable accompaniment of the democratic process and they, of course, proliferate in Latin America--only in the two dictatorships of Paraguay and the Dominican Republic do they become really fictitious. Uruguay has developed parties to a probably greater degree of influence in public life than is true of any other Latin American country; they are referred to in fourteen articles of the Uruguayan constitution. (3) The peculiar and complex voting system prevailing in Uruguay (the "double simltaneous vote") is at once the wonder and despair of many commentators; it also receives attention in fourteen articles of the constitution.

These and other instances give the impression that the Uruguayan basic law is much more tied to political reality in the country than is true in the case of Paraguay. Uruguay probably has progressed further toward over-all integration than any other country in Latin America. It is a difficult and thankless task to say which country has made the least progress-probably others would rank lower than Paraguay in that unenviable category. National integration, democratic attainment, and realism in constitution writing cannot be nathematically equated, of course, but it seems a tenable assumption that a relationship exists among them.

As various factors introduce greater unification or integration in one or another Latin American country it may be a reasonable conclusion that the political life of

those countries will approach the general manifestations, though of course not necessarily the details, of those others of the western world which have already achieved a considerable measure of integration. In the latter we find less divergence between the written and the real constitutions; perhaps, then, in the former, too, the future will bring a condition of greater harmony and the task of constitution making can be approached more realistically.

THE OUTLINE OF OHIO POLITICS

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Popular views of Ohio politics are no doubt varied, but one view which seems to be rather common is that Ohio is a Republican citadel from which the Ohio division of that army used to sally forth to lead the battle on a national front. The Ohio Republicans are seen on the right wing of the Republican force, and it is thought to be representative of rural mid-western Republicanism in general. The minority Democrats are somehow peculiar fellows existing in an unfriendly environment, and succeeding only when they are able to borrow the clothes of the Republicans, to wit, Frank J. Lausche. As is usual with such sweeping and imprecise generalizations, there is an element of truth in all this. But there are many serious errors, and some other shots which are very wide of the mark if they are not off target altogether.

Ohio is a competitive two-party state in which Democratic gubernatorial candidates have a way of running ahead of their ticket. The election system can reshape popular mandates into strange forms, but it does permit alternation in control of the state government as popular majorities change. The two major parties are reasonably responsible; that is, each is fairly cohesive and disagrees with the other often enough to make a choice between parties meaningful in terms of policy. These are some of the leading characteristics of Ohio politics.

They may be thought to be normal and desirable. Whether or not they are desirable, they are not known to be normal. Two-party competition evidently exists in only about one-half of the American states. Election systems often prevent or seriously impede the appearance of legislative majorities consistent with popular majorities, and whether party responsibility or alternatives like urban-rural factionalism or multi-factionalism characterize state legislative activity is a matter still disputed and still subject to investigation.

The purpose of this paper is to describe the characteristics of Ohio politics which have been named and to account for their existence in part, at least. Approaches, methods, and concepts which have been used to describe and explain aspects of various political systems are here applied to Ohio. A clearer view of Ohio politics is anticipated, of course; but it is anticipated also that the information and analysis in this paper will be of use in the making of future comparative studies. There is some comparative analysis in this paper itself and a few generalizations which reach beyond Ohio politics. One last word of introduction by way of warning and invitation: this paper is a preliminary report on continuing research. Comments and suggestions will be more than ordinarily welcome.

Two-Party Competition: Extent and Basis

As already mentioned, fairly close competition between the major parties is characteristic of Ohio politics. From 1868 to 1957 Republican presidential candidates did carry the state 17 times to 6 times for the Democratic candidates, who fell below 45% of the two-party vote, however, on only 5 occasions. To put the matter a little differently, the Democrats in the last 23 presidential elections had more than 50% of the two-party vote 6 times, more than 45% but less than 50% 12 times, and less than 45% 5 times.

The Democrats have been more successful in gubernatorial elections. Of the 47 held since 1864 they won 23 with 19 of their victories coming after 1900. Since then the Republicans have won only 10 gubernatorial elections. In the period 1865 to 1900 the Democrats won just 4 gubernatorial elections, but fell below 45% of the two-party vote only in 1893 and 1895. In the twentieth century when the Republicans won relatively few gubernatorial contests, they fell below 45% of the vote only 4 times.

The legislature has been more frequently controlled by the Republicans than has the governor's office. Since 1883 they have organized the state House in 29 of 38 regular sessions. They had a majority in the Senate in 25 of the 38 sessions while the Democrats had a Senate majority in only 11 sessions. The body was evenly divided twice. A more elaborate description of the extent of two-party competition in Ohio is certainly feasible, but it is the basis for that competition which is to be investigated principally in this section of the present report.[1]

This investigation and those which are to follow involve the use of some terms which need to be discussed fairly soon; so let us take a pause which is not likely to refresh. The terms are "urban" and "rural," and they are heard frequently in discussions of state politics. What is actually involved in their use is a classification of places into two kinds and the application of the appropriate labels. In this study there is no treatment of places smaller than counties; so the problem is to classify them.

Counties are counted as urban for the years after 1929 if they had a city of 50,000 or more population or if they were adjacent to a county with a city of that size providing there were also 10,000 or more persons in non-agricultural employment. This corresponds to the definition of standard metropolitan area used in the 1950 census. For the years before 1930, counties are counted as urban if they contained a city of 50,000 or more. In any given year a county which is not counted as urban is counted as rural.

About all that can be asked from a classification of this kind is that it separate entities which differ in some significant respect and that it group together other entities which are significantly similar. It is believed that this has been done. One frequently gets the impression that there is a marked change in the relative strength of the vote of the major parties at about the point an urban area becomes classifiable as metropolitan. A recent study supports this impression;[2] and, as will be shown very soon, the aggregate voting behavior of Ohio counties classified as rural in this study does differ, as a matter of fact, from the behavior of counties classified as urban. It may be suspected that the rural category is too broad and that sub-division would be useful. A closer look is given to the category a little later. It turns out that a more refined classification based on the relative size of a county's city and farm population would not be politically significant. If for some reason there is an objection to the way in which the labels "urban" and "rural" are applied, then all that need be done is to convert them into the terms "metropolitan" and "non-metropolitan" whenever they appear.

In the gubernatorial elections following the second World War both major parties in Ohio have taken the larger part of their vote from the urban counties although the

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[1] The information summarized in the preceding paragraphs can be found in Table A of the appendix to this paper.

[2] Leon D. Epstein, Politics in Wisconsin (Madison: University of Wisconsin Press, 1958), Ch. 4, pp. 57-77.

Democrats have usually gained a majority there in contrast to the Republicans whose following in rural Ohio is larger than that of their rival. A fuller and more precise statement is offered by the table which follows.

Table 1. Ohio Gubernatorial Elections, 1946-1958: Democratic and Republican Percentages of the Two-Party Vote by Place*

	Democratic %			Republican %		
Year	State	Urban	Rural	State	Urban	Rural
1946	49.1	33.7	15.4	50.9	30.7	20.2
1948	53.6	36.6	17.0	46.3	27.8	18.5
1950	52.6	37.6	15.1	47.3	29.1	18.2
1952	55.9	39.5	16.4	44.1	27.6	16.5
1954	54.1	39.1	15.0	45.9	28.5	17.4
1956	43.9	32.7	11.2	56.1	35.4	20.7
1958	56.8	41.0	15.7	43.2	27.0	16.3

* All figures are rounded off to the nearest one-tenth of one per cent.

Obviously the Democrats compete successfully on the basis of clear urban majorities and strong rural minorities. The Republicans compete less successfully on the basis of an urban vote that is smaller and a rural vote which is larger than the Democratic.[3] Victories and defeats can be compounded, of course, in many ways.

Whether the basis for two-party competition in Ohio is the same as or similar to that in other states is impossible to tell without the relevant comparative data, but it certainly has not always been the same in Ohio as is shown by Table 2.

Table 2. Ohio Gubernatorial Elections, 1920-1930: Democratic and Republican Percentages of the Two-Party Vote by Place*

	Democratic %			Republican %		
Year	State	Urban	Rural	State	Urban	Rural
1920	46.9	17.1	29.8	53.1	26.5	26.5
1922	50.6	21.8	28.8	49.4	20.8	28.6
1924	54.5	24.7	29.8	45.5	22.7	22.8
1926	50.6	22.4	28.2	49.4	22.2	27.2
1928	44.9	23.3	21.6	55.1	28.1	27.0
1930	52.8	30.3	22.5	47.2	26.6	20.6

* All figures are rounded off to the nearest one-tenth of one per cent.

Relative to the 1946-1958 period, the weight of the urban vote is less as would be expected. In addition, it is more evenly divided between the two parties. One can

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[3] Additional data can be found in Table B of the appendix.

also observe that in the earlier period the Democrats had a majority of the rural vote in every election except that of 1928, but there is no need to spin-out the comparison.

What is significant is that between the twenties and the end of World War II the basis for two-party competition shifts. The size of the urban vote has increased steadily, of course. Beyond that the Democratic share of this expanding sector of the electorate has moved on an upward secular trend from 1920 to the present. It is clear but not frighteningly steep.[4] In contrast, the Democratic percentage of the rural vote shows a downward secular trend of roughly equal proportions.[5] The two lines cross in 1939, but actually the watershed is in 1934. In the election of that year the Democratic percentage of the urban vote increased slightly while the party's share of the rest of the vote dropped significantly. The result of these contrary movements was that the Democratic share of the rural vote fell behind the Democratic share of the urban vote, a relationship which has not been reversed. Since 1940 the gap has varied from 9 to 19%.

Analysis of the composition of the membership of the state House confirms that the view that the shift from one era to another occurred in about 1934. From the election of 1920 to the election of 1934 the number of Democrats from rural counties exceeded the number of urban Democrats. In 1934 the number of the former was reduced, and the number of the latter increased. Since that time the majority of the Democratic delegation in the House has been urban. The number of Democrats from other areas has fluctuated in recent years, but within lower limits than those which existed before the beginning of the current era of party competition.

Before proceeding to a closer analysis of the urban and rural vote, a few comments may be made concerning the peculiarities of gubernatorial elections in Ohio. The measures employed in the opening description of party competition in the state reveal the anomaly that the Democrats apparently have more support in gubernatorial contests than in others. Closer comparison confirms the fact. From 1908 to the present 13 presidential and gubernatorial elections have been held simultaneously, and in these elections the Democratic gubernatorial candidate for governor ran ahead of the party's presidential candidate in 10. Only in 1916, 1936, and 1940 did the presidential nominee lead the Democratic choice for governor. By use of a graph it is possible to compare non-simultaneous elections. Performance of the operation reveals that the Democratic gubernatorial line runs above the Democratic presidential line from 1865 to 1959 with the exception of the periods 1891-1896, 1914-1918, and 1934-1944. Evidently there is a number of Ohio voters who will vote rather often for a Democratic governor but not for a Democratic president. Location of these "gubernatorial Democrats" might offer a clue to the reason for their behavior, but that inquiry remains to be made.

The suspicion arises that Ohio state politics is to some small extent independent of national politics. An alternative explanation is that it is gubernatorial politics which is autonomous and not state politics; that is, it may be only Democratic candidates for governor who run ahead of the national ticket in the state and not the Democratic candidates for the legislature. The assumption is that state politics is truly autonomous only when both gubernatorial and legislative candidates

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[4] The secular trend is expressed by the equation $Yc = 46.67 + .2563X$.

[5] The secular trend is expressed by the equation $YC = 57.08 - .2639X$.

run ahead of the candidate for president.

Comparison of votes for governor with seats won in the legislature may be enlightening, but it may also be confusing since the items being compared are not strictly comparable. It may be pointed out, however, that in the period from 1883 to 1905 the winning gubernatorial candidate usually carried with him a majority of his own party in both houses of the legislature. Since each was well apportioned relative to population in this period, it may be inferred that gubernatorial and legislative votes were much the same. From 1905 to the present, however, the Democrats have won the governorship 13 times without winning a majority in the lower house. The same thing happened in regard to the Senate almost as often.[6] During this period the House was not well apportioned relative to population although the Senate continued to be. Again the indicated inference is that Democratic votes for the legislature fell behind Democratic votes for governor.

Comparison of votes for governor with votes for the legislature is a much more satisfactory way to get at the question, but involves some laborious computations. As a result, there has been only an opportunity to compare gubernatorial votes with votes for state representative in the period 1948-1958 during which time there were 6 state elections. Lausche ran in the first four and DiSalle in the last two. The gubernatorial Democratic vote exceeded the Democratic vote for state representative in every election except 1956 when the percentages were almost identical. In 1948 and 1952 the Democratic vote for the Ohio House was in percentage terms virtually the same as the Democratic presidential vote. On the basis of this limited comparison of gubernatorial votes with legislative seats and votes I strongly suspect that it is gubernatorial politics and not state politics which is slightly independent of national politics in the twentieth century, at least.

Further analysis of the basis of two-party competition in Ohio requires a closer look at both the urban and rural counties. The cities are not uniformly Democratic and the country is not uniformly Republican. Taking the cities first: in the period 1936-1956 only 10 of the 18 metropolitan counties in the state averaged more than 50% Democratic. In 1958 all went Democratic, but the Democratic percentages range from 69% in Summit County (Akron), 67% in Cuyahoga (Cleveland), and 66% in Belmont (Wheeling, W. Va., metropolitan area) to 52% in Hamilton (Cincinnati), 51% in Clark (Springfield) and 46% in Allen (Lima).

An explanation of these differences necessarily involves location of the factors which contribute to the formation of the Democratic majority and to the maintenance of the Republican Party as a serious competitor. The approach to be taken was the correlation of political differences with demographic differences. It is almost too much to expect in a field like politics, cluttered as it is with the unknown and immeasurable; but anticipated correlations appear faithfully. Using a series of scatter diagrams it was discovered that an increase in the percentage of the gainfully employed persons in mining and manufacturing relates positively to an increase in the proportion of the Democratic vote. An increase in the size of the population also relates positively to an increase in the percentage of Democrats although a plateau is reached fairly soon. And an increase in the number of "Democratic foreign born"[7] expressed as a percentage of the 1910 population relates more positively than

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[6] V. O. Key, Jr. presents a graph showing gubernatorial votes in Ohio, house and senate seats for the period 1920-1952: American State Politics: An Introduction (New York: Knopf, 1956), p. 72.

[7] The number of "Democratic foreign born" in each county is (continued on page 6)

any other factor tested with an increase in Democratic strength.

Continuing the use of scatter diagrams but converting the data into rank orders, the correlations become even more positive. Mathematical expression can be given to rank order correlations by use of Spearman's formula.[8] The results are as follows:

rank in mining and manufacturing vs Democratic rank	+ .6657
rank in population vs Democratic rank	+ .3623
rank in % of "Democratic foreign born" vs Democratic rank	+ .7771

These three factors were combined by averaging the ranks for each county and constructing a new rank order. This is admittedly a pretty crude way to combine these factors, but the resulting rank order correlates with the Democratic rank order with a coefficient of + .8680. It is difficult to ask for more.

This is a rather summary account; so it may be informative if some details and illustrations are added. Cuyahoga County (Cleveland), the largest in the state, is the third most Democratic on the basis of an average of its Democratic percentage in gubernatorial elections held between 1935 and 1957. According to the 1950 census, Cuyahoga County ranks eleventh among the 18 metropolitan counties in the state in terms of the percentage of the working force in mining and manufacturing, but it is first so far as the percentage of "Democratic foreign born" is concerned. Franklin County (Columbus) is occasionally considered somewhat anomalous since it is rather large (503 thousand in 1950) but a battleground in gubernatorial contests. But only about one-fourth of the gainfully employed are in manufacturing, and the county ranks thirteenth in terms of "Democratic foreign born."

The Republican Party in Cincinnati (Hamilton County) is often given considerable credit for holding the dikes against the Democratic tide, and no doubt it has done well. The county is the second largest in the state, but it ranks fifteenth in terms of the percentage of the gainfully employed in mining and manufacturing which correlates very closely with its Democratic rank of 16. In addition there are relatively few "Democratic foreign born" in this county where the significant ethnic group is German. In contrast to Hamilton County the very strong Democratic counties in the Youngstown and Wheeling metropolitan areas are heavily industrialized, have important mining operations, and have numerous persons of southern and eastern European origin. This discussion of voting in the urban counties could be easily extended, but enough has been said to suggest a clear and reasonably full explanation of the basis for partisan followings in urban Ohio.

Just as the cities are not equally Democratic, the rural counties are not equally Republican. As a matter of fact, some are not Republican at all although a sizeable majority of them now stick with the GOP through thick and thin. In the gubernatorial elections during the period 1936-1956: 8 rural counties averaged 50% or

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(continued from page 5) defined as the number of persons in the county at the time of the 1910 census who were born in or had two parents born in any one of the following countries as they existed then: Austria, Ireland, Italy, Hungary, and Russia. The measure is rough but useful.

8 For a full discussion of Spearman's formula see Sidney Siegel, Nonparametric Statistics for the Behavioral Sciences (New York: McGraw-Hill, 1956), pp. 202-213.

more Democratic; 5 averaged from 48 to 50% Democratic; 12 others averaged from 45 to 48% Democratic; in the other 45 the Democratic average was less than 45% of the two-party vote. In 1958: 30 rural counties produced majorities for DiSalle; 5 others gave him from 48 to 50% of their two-party vote; 8 others contributed from 45 to 48% of their vote; the remaining 27 were 55% or more Republican in the face of a strong Democratic tide. Obviously Democratic majorities in most rural counties are not the ordinary thing, but they do occur. Some additional light may be cast by the table below.

Table 3. Ohio Gubernatorial Elections, 1936-1956 (11): Frequency of Democratic Majorities in 70 Rural Counties

Number of Democratic Majorities	Number of Counties
11	1
10	0
9	1
8	3
7	1
6	1
5	5
4	3
3	5
2	8
1	15
0	27

The easily detectable differences in the political behavior of the rural counties should be explained if possible. The success just attained in correlating demographic characteristics with voting behavior in the urban counties encourages making the same approach to the rural counties. The results are much different, and ultimately much more interesting.

An hypothesis which comes quickly to mind is that the rural counties will become more Republican as they become more rural. To test this hypothesis a scatter diagram was constructed showing for each county the percentage of its population classified as rural farm in 1950 and its average Democratic percentage vote for the period 1936 through 1956. There is no direction to the scatter[9] although one unexpected relationship does appear. There is evidently a slight tendency for these counties to become either more Republican or more Democratic as they become more rural.[10]

Another hypothesis which may be tested is that the Democratic vote will increase as manufacturing increases. There is a tendency for that to happen in the metropolitan counties, and it is reasonable to expect it to operate also in the non-metropolitan counties. A scatter diagram similar to the one just described was constructed, but again there is no direction to the scatter. It appears that differences in the amount of manufacturing do not relate to differences in voting behavior in counties classified as rural.

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[9] If percentage urban is substituted for percentage rural farm, the result is the same.

[10] Heinz Eulau discusses the same phenomenon at length: "The Ecological Basis of Party Systems: The Case of Ohio," Midwest Journal of Political Science (August, 1957), pp. 125-136.

It may be suspected that the voting habits of a rural county relate to the agricultural economy of the county. Perhaps the more Democratic counties are distinguished by small farms, small crops, and low income farmers. This hypothesis was tested in several ways. The average value of land and buildings per farm in each county was compared with its vote, and the percentage of commercial farms in each county selling annually less than $2,500 in products was also compared with its vote. It was discovered that the vote does not relate to these economic characteristics either positively or negatively. Many other attempts to correlate voting with demographic or economic characteristics might be made, but enough has been done to suggest strongly that this is the wrong tack.

One begins to wonder where these counties with varying political preferences are relative to each other and how long this apparently strange pattern of rural voting has been going on.[11] A map was constructed showing the location of the 35 counties most Democratic and the 35 counties most Republican for the period 1936-56. The 18 urban counties were omitted. Another map was constructed showing the 44 most Democratic and the 44 most Republican counties in the gubernatorial election of 1873, an early post-Civil War contest, with a very close race typical of the era when party competition was very tight. Only Cuyahoga and Hamilton counties could be considered urban; so their exclusion seems unnecessary.[12]

The similarity of these two maps is impressive. Southeast Ohio is and was among the more Republican areas of the state. The same is true of the northeast, which is, however, now heavily urbanized. Another group of strongly Republican counties can be found in the central part of the state and moving off to the southwest. They were high Republican in 1873, and still appear with their political preference unchanged. The more Democratic counties fall into two groups. One begins with a group of counties along the Ohio River in the central part of the state and moves off to the northeast. The second includes a line of counties moving from east to west in the north central part of the state and spreading out to their widest point along the Indiana line.

The geographic pattern is so clear and its persistence so great a number of rank order correlations were made. Eighteen seventy-three ranks were correlated with ranks in other years with the results shown below. Spellman's formula for computing rank order coefficients was used again.

Table 4. Ohio Gubernatorial Elections: 1873 Ranks Correlated with Ranks in Designated Years

Year	Coefficient
1848	+ .7451
1897	+ .9175
1920	+ .7612
1934	+ .4350
1936-56 Av	+ .2846
1936-56 Av*	+ .7511

* Counties with more than 100% population increase from 1880 to 1950 and counties with significant German populations eliminated.

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[11] This approach was suggested by several comments in a study by Harry R. Stevens, The Early Jackson Party in Ohio (Durham, North Carolina: The Duke University Press, 1957). The Indiana study by V. O. Key, Jr., and Frank Munger was discovered later: "Social Determinism and Electoral Decision: the Case of Indiana," American Voting Behavior, eds. Eugene Burdick and Arthur J. Brodbeck (Glencoe, Ill.: The Free Press, 1959), pp. 281-300.

[12] Both maps may be found in the appendix.

The election of 1848 was selected for inclusion in this series since it was the last pre-Civil War election in which Democrats and Whigs had a clear field. The high correlation of 1848 and 1873 ranks indicates clearly that the 1873 pattern is actually a pre-Civil War pattern. It may be added that a higher correlation can be attained by elimination of a few western Ohio counties which were very sparsely settled in 1848. This is easily justified on the ground that the core of the future population had not yet arrived.

Some change occurs between 1897 and 1920; but the correlation of 1873 and 1920 ranks is high, nevertheless. When one enters the New Deal and post-New Deal period, however, the correlations are much lower although still significant. Examination of 1873 and 1936-56 ranks reveals that the counties which had gained most in Democratic rank were those which had experienced very large increases in population and that those which had lost most were counties in which there is a significant German population. The counties with more than 100% increase in population from 1880 to 1950 were eliminated as were the counties in which the 1910 population was composed of 10% or more of persons born in Germany or in the United States of two German-born parents. There were 24 counties in the first category and 16 in the second. Since the categories overlap, only 33 counties in all were eliminated. The resulting high correlation indicates that the pattern of rural voting existing in pre-Civil War Ohio still survives outside the more highly urbanized counties and outside the German counties.

An attempt was made to get at the voting behavior of Germans in Ohio by analyzing the behavior of the rural counties in which they are at all numerous. The result is a puzzle. These counties do decline in Democratic rank relative to other rural counties after the end of the nineteenth century. But their downward path is uneven, and the descent does not occur at the times that it is expected, i.e., during the first and second world wars when war-mongering Democrats in Washington got the nation involved in uncomfortable foreign contests.[13] The behavior of the counties that might be counted as German is evidently more complex than can be untangled by this brief analysis.

The dominant pattern of rural voting can be explained by the way in which Ohio was opened and settled by residents of eastern and southern states.[14] The southeastern section of the state was opened by the Ohio Company, a New England group, and was settled by New Englanders. They showed a distinct preference for John Quincy Adams in the election of 1824. In 1848 they were Whig, and to-day they are Republican. A similar development occurred in northeastern Ohio, the area of the Western Reserve of Connecticut. It was opened later than the Ohio Company area, but settlers when they arrived were overhwelmingly New Englanders. The Western Reserve favored Adams in 1824 and the Whigs in 1848. In the gubernatorial election of 1863 they were resolute in their opposition to the "notorious" Copperhead, Clement Valandigham, Democratic candidate for governor. The area is now heavily urbanized, and since the

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[13] The relevant data can be found in Table C of the appendix.

[14] Unfortunately there seems to be no thorough description of the areas settled by persons from different eastern and southern states, but clues and suggestions can be found in a number of places including the following: Robert E. Chaddock, Ohio Before 1850, A Study of the Early Influence of Pennsylvania and Southern Populations in Ohio ("Columbia University Studies in History, Economics and Public Law," Vol. XXXI [New York: Columbia University Press, 1908]); William E. Peters, Ohio Lands and Their History (Athens, Ohio: W. E. Peters, 1930); William T. Utter, The Frontier State, 1803-1825 (Columbus, Ohio: Ohio State Archaeological and Historical Society, 1942); Francis P. Weisenburger, The Passing of the Frontier, 1825-1850 (Columbus, Ohio: Ohio State Archaeological and Historical Society, 1941).

early thirties has been more Democratic than Republican although the few remaining rural counties in the area are true to the faith of their forbears.

A very large section of Ohio bounded by the Ohio River on the south and by the Scioto and Little Miami rivers on the east and west and extending well into northern Ohio was for many years the Virginia Military District. Virginia had claimed it early, but later relinquished its claim with the reservation that it could reward its Revolutionary veterans by land grants in the area. Virginia veterans were required to prove their service to the satisfaction of Virginia officials who were authorized to issue transferable certificates entitling the bearer to Ohio lands. The prospective settler with his certificate proceeded by getting a survey of the land of his choice in the District. All that remained then was to present the survey and the certificate to the appropriate office in Ohio. This process continued until about 1850. One result is an extraordinarily irregular survey in the entire area and more than ordinarily confused land titles. The other and more significant result is that large numbers of Virginians were encouraged to cross into southern Ohio along with other settlers from the South. But it must be pointed out that the Virginia Military District was opened to settlers from other states by land agents who bought up the grants from Virginia veterans and resold them to all and sundry.

There is a surprise when one compares the location of the Virginia Military District with the location of Democratic voters in rural Ohio. These areas coincide along the Ohio River but the line of relatively strong Democratic counties moves off to the northeast and well into the northern half of the state while the Military District runs north and slightly west. The explanation seems to be that the southerners who came into the state in the first half of the nineteenth century followed existing roads and waterways which did lead off to the east and to the north. Evidently the Virginia land grants were no substitute for adequate methods of travel and communication--although they did, no doubt, encourage movement into the southernmost counties of central Ohio.

The area of southern influence extended remarkably far north. James Garfield's biographer reports that the congressman in the campaign of 1864 sallied forth from his stronghold in the Western Reserve to lecture the residents of nearby Holmes County on their duties to the union.[15] A violent reaction from the Copperhead residents of that county was more than half-expected. A few rumblings occurred, but Garfield succeeded in addressing a small crowd without serious incident. Holmes County was until the last decade regularly one of the most Democratic counties in the state.

It is less easy to account for the Republican area in central and southwestern Ohio and for the Democratic area in north central and northwestern Ohio. All I can offer at this time is some suggestions. It was in Delaware County in the central section of the state that the New England parents of our nineteenth president, R. B. Hayes, settled in 1824 among other New Englanders, and quick investigation of the county histories indicates New England settlement was typical in the strong Republican counties of central and southwestern Ohio. The same source indicates that the northern and western counties where the Democrats were stronger was settled heavily by Pennsylvania Dutch. The census reports of 1890 and 1910 reveal that much of this area was overlaid later by German settlers in varying numbers. The scent of this is good but the trail needs to be followed much farther. But it seems undeniably clear that the differences in the voting behavior of the rural counties originate in the past and survive by the force of tradition.

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[15] Theodore Clarke Smith, The Life and Letters of James Abram Garfield (New Haven: Yale University Press, 1925), pp. 379-380.

The fact that Ohio is an area of mixed, not homogeneous, settlement has important consequences. It explains the differences that have been discussed to be sure. More than that, it permits competition for the rural vote. The Republicans aided by the tradition of the state's New England settlers and by the normal forces of small town politics are ascendant, but the Democrats can make a vigorous challenge. Indeed, they must show well in rural Ohio to win statewide contests. And certainly not the least important consequence of divided traditions and divided partisan loyalties in rural Ohio is the fact the Democrats can win enough legislative seats there to capture the state legislature.

The Election System

The existence of two parties with roughly equal followings standing on different foundations does not assure Ohioans of the alleged benefits of party competition which, it may be assumed, appear fully only when partisan control of the government continues or changes in accordance with success or failure at the polls. In many states the election system over-represents rural areas in the legislature to the advantage of the rural interest, if there is such, and to the advantage of whatever party dominates the over-represented rural section. The consequence in some places is a fairly permanent majority for one party in, at least, one house of the legislature. The election system in Ohio over-represents rural counties, and is frequently criticized on the usual grounds. Republicans are given an advantage, but surprisingly the system has not in recent years prevented changes in control as popular majorities changed. The way in which the system works out is obviously important to Ohio politics, and it offers an instructive commentary on the operation of election systems.

The 1851 Constitution of Ohio provided for representation in both houses of the General Assembly in accordance with population, and implemented the provision by a system of automatic or administrative decennial reapportionment. Counties were the basic unit of representation for both House and Senate. But counties were to be combined to form new districts if they were found to be disproportionately small, and larger counties were to be given additional representatives and senators in proportion to their population. The Constitution left a minimum of administrative discretion to be used in combining counties for representation in the General Assembly. There was no provision for districting within the counties, and they have not been sub-divided. This plan was changed when the so-called Hanna Amendment was adopted in the fall election of 1903. It added the proviso that no county should have less than one representative in the House.

Under the operation of the system as amended the Senate is now well apportioned in accordance with population. The less populous counties are combined into large districts, and the larger counties have additional at-large representation. Cuyahoga County, for example, elected 6 state senators at-large in 1958. The larger counties also have additional at-large representation in the House. In 1958 Cuyahoga County, for example, elected 18 representatives, and Hamilton 9. But as a result of the Hanna Amendment rural Ohio is over-represented. One writer has calculated that the 8 largest urban counties have 54% of the population and 39% of the seats in the House.[16] Figures which I will present below show that the 18 metropolitan counties in Ohio which regularly produce about two-thirds of the voters in House elections receive only about 46% of the seats, a deficit of about 20%. Since Republicans control most of the rural counties, they are the logical beneficiaries. Democrats with large and small D's are sharply critical of the arrangement, but the system is not so easily condemned in terms of its results as they may think as is shown by an analysis

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[16] Gordon E. Baker, Rural Versus Urban Political Power (New York: Doubleday and Co. Inc., 1955), p. 16.

of House elections from 1948 through 1958.[17]

In 1948 the Democrats captured the House on the strength of their more than proportionate share of urban seats in spite of the fact they did not capture a majority of the voters in the state. In 1958 the Democrats carried the House again. Once more they got more than their proportionate share of the urban seats although this time they did get more than 50% support in the state. In the intervening years it was the Republicans who carried the urban counties. They got a "majority bonus" in every year except 1954 when the support of 50.3% of the urban voters yielded only 48.5% of the urban seats. One of the effects of "majority bonuses" is to give the leading urban party a share of legislative seats roughly equal to its share of the popular vote in the state. The losing urban party, however, gets many fewer seats than the size of its vote might warrant.

The Republican share of the rural vote between 1948 and 1958 fluctuated between roughly 56 and 68%. Their share of the rural seats varied from roughly 64 to 88%. They not only got more than a proportionate share of the rural seats, but an extra bonus on account of the disproportionately large number of rural seats in the House. In 1956, for example, 21.6% of the House voters cast their ballots for rural Republicans, a vote which produced 42.4% of the seats for rural Republican candidates. In the same year 34.0% of the House voters marked their ballots for urban Republicans, a vote which produced only 27.3% of the seats despite the fact the Republicans got more than their proportionate share of the urban seats.

The net effect of these simultaneous distortions has been that the party with the backing of the majority of the voters has controlled every session in the period examined except the 1949 session when the Democrats controlled after an election in which only 49.8% of the voters rallied to their side. However, that does not seem to be a very serious inequity. Republican legislative majorities have been built on an urban "majority bonus" except in 1954, a rural "majority bonus," and upon rural overrepresentation. Democratic legislative majorities have been built on very large urban "majority bonuses," and occur in spite of the fact the Democrats are penalized severely by their minority position in most rural counties and by rural overrepresentation. Republican majorities being built upon a "triple bonus" have been much larger than Democratic majorities in absolute terms and in relation to the number of voters behind them. Republican legislative delegations have in every recent session been much more rural than the popular following of the party, and Democratic legislative delegations are conversely much more urban than the popular following of the party. Whether this has serious consequences for either party is difficult to say, but one can well imagine that Republican chances for competing equally with the Democrats for urban voters is not helped by a legislative record made by a predominantly rural legislative delegation.

The secret, if it is that, which explains the strange relationship between the number of voters and the number of their representatives lies in the character of the election system. It is a plurality system, of course; the winners are those fortunate fellows who poll, at least, one more vote than their nearest competitor. In this system there is ordinarily no opportunity for minority or proportionate representation, a possibility which is created, however, by the existence of multi-member districts. But the size of the "majority bonuses" in urban Ohio where the multi-member districts exist indicates that minority representation is much less than proportionate. There is obviously enough block voting to preserve the basic characteristics of the plurality system.

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[17] A summary of the analysis is presented in Table D of the appendix.

It permits the winning party to win all the seats if its voters and those of its opponent or opponents are distributed evenly throughout the entire area to be represented. This condition is never attained in practice, but there is usually an approach to it which gives to the winner more than its proportionate share of the places to be filled. It also permits the leading party to be defeated if its votes are concentrated in relatively few districts. This happened to the British Labor Party in 1951, and it happened in the selection of presidential electors in 1888. In short, the impact of the plurality system varies with the distribution of the vote.

In contemporary Ohio the vote of the major parties usually is distributed evenly enough in the metropolitan parts of the state to reward greatly the leading party, but not so evenly as to deny representation to the second. In rural Ohio the vote is distributed evenly enough to substantially reward the Republican majority but not so evenly as to prevent the election of some rural Democrats. Given this distribution of voting strength and roughly equal numbers of urban and rural reps in the House, Ohio gets both Democratic and Republican legislative majorities of the kinds already described. And it is fairly easy to predict the consequences of changes in the distribution of the vote. It is also apparent that the idea advocated by some Republicans that the metropolitan counties be districted would be disastrous for the Democrats since it would probably reduce substantially the even distribution of metropolitan votes, which is now an essential condition for Democratic control of the General Assembly.

Before leaving this subject of election systems a few general comments may be offered. The failure of partisan legislative strength to correspond to popular support means usually that the Democrats have won more votes than seats. The customary explanation involves reference to the fact that it is in the cities that the Democrats are strongest but that the cities are under-represented in the legislatures. The problem is a little more complex. The Democrats are not only strongest in the cities, but there is evidently some tendency for their vote to be relatively more concentrated than the Republican vote. The general use of plurality voting systems means that as a consequence of their improvidence the Democrats are likely to be punished when seats in the legislature are filled. In Ohio they escape although not completely for several reasons that have been mentioned. There is election at-large in the urban counties, and the Democrats do have a base in parts of rural Ohio.

Legislative Behavior

The next and last topic to be investigated in this paper is the behavior of Republican and Democratic partisans in the legislature. One popular idea in many states is that legislative politics is characterized by urban-rural factionalism and that political parties have little to do with the making of public policy. A few years ago domination of the legislature by the so-called "Corn Stalk Brigade" was a staple of political discussion in Ohio. Less has been heard of the "Corn Stalk Brigade" in the last few years, but talk of urban-rural factionalism is sufficiently frequent in Ohio to justify an effort to measure its importance in the General Assembly.

I assume that most observers would agree that urban-rural conflict exists when urban representatives, united in spite of party differences, disagree with rural representatives, also united in spite of party differences. Frequent occurrence of this situation would lead to the judgment that urban-rural factionalism exists.

One way to test for the presence of urban-rural conflict and factionalism is by the examination of legislative roll calls, but it is an imperfect method. The im-

portance of roll calls cannot be weighed without introducing possibly subjective factors, and there is no doubt that some conflicts may be kept off the floor by compromises devised in committee or caucus. If a large number of roll calls are examined, however, it is reasonable to assume that significant patterns of behavior will leave a clear trace on what is, after all, the public record on which our representatives must stand. And it is very difficult to devise convenient alternative methods for discovering patterns of legislative behavior; so I will examine roll calls.

The sessions selected for analysis were the 1935, 1949, 1955, and 1957 session. The 1955 and 1957 sessions were the most recent complete sessions at the time this study was undertaken. The 1949 session was then the most recent complete session in which there was a Democratic legislative majority, and the 1935 session was selected as a session separated in time from the others but still in the current era of party competition.

This choice of sessions has the merit of varying the factor of partisan control. As indicated the Republicans were in command in the 1955 and 1957 sessions and the Democrats in 1949. In 1935 the Democrats had a majority in the Senate; and the Republicans a very small majority in the House which the Democrats, nonetheless, succeeded in organizing. The governor was Democratic in all sessions except 1957.

It was necessary to classify representatives and senators as urban and rural. The classification of urban and rural counties adopted earlier in this paper was continued. Representatives from urban counties were counted as urban, and representatives from rural counties were counted as rural. It was more difficult to classify the senators who represented more than one county. It was decided to count them as urban if more than 50% of the votes cast in their election were cast in counties classified as urban; otherwise they were counted as rural.

Table 5. Composition of the Ohio General Assembly, 1935, 1949, 1955, and 1957

	House								Senate							
Year	D	R	UD	URu	RuD	RuR	U	Ru	D	R	UD	UR	RuD	RuR	U	Ru
1935	67	68	40	22	27	46	62	73	19	13	15	7	4	6	22	10
1949	69	66	51	12	18	54	63	72	19	14	18	3	1	11	21	12
1955	47	89	34	32	13	57	66	70	12	21	12	10	0	11	22	11
1957	42	97	31	38	11	59	69	70	12	22	12	10	0	12	22	12

Legend: D - Democrats; R - Republicans; U - Urban; Ru - Rural

It was necessary to adopt some measure of agreement and disagreement. The measure selected was the index of likeness. It is a way to express in a single figure the relationship between two groups voting yea or nay on a given question, and is calculated by subtracting the percentage of yeas of one group from the percentage of yeas of the other and by then subtracting the result from 100. If two groups are perfectly united in opposition to each other, the index is zero. If each group votes 75-25 in favor of a proposition, their behavior is identical; and the index is 100. If group A votes 100-0 yea and group B divides 50-50, it is apparent that group B is half way between complete agreement and disagreement with group A. The index of likeness is 50.

The number of roll calls in a meeting of the Ohio General Assembly is very large. The state constitution requires entry in the journal of the yeas and nays

before passage of any bill, and further authorizes any two members to demand a roll call on other votes. The largest number of these roll calls are unanimous or nearly unanimous, and do not reveal any kind of division. It was decided, therefore, that roll calls would be considered only if the minority was equal to 10% or more of the majority. The number of roll calls eliminated was substantial. The number remaining was as follows:

Year	House	Senate
1935	182	66
1949	216	149
1955	163	117
1957	173	83

To test for the presence of urban-rural conflict in the House four indices of likeness were computed for each roll call: urban Democratic-urban Republican; rural Democratic-rural Republican; urban Democratic-rural Democratic; urban Republican-rural Republican. Rural Democrats were either very few or non-existent in the 1949, 1955, and 1957 meetings of the Senate; so indices involving rural Democrats were not computed for those sessions of the Senate. Maximum urban-rural conflict on a given roll call would be shown by the following: a high urban Democratic-urban Republican index of likeness; a high rural Democratic-rural Republican index of likeness; a low urban Democratic-rural Democratic index; and a low urban Republican-rural Republican index. Minimum urban-rural conflict would be shown by the contrary.

The result might be presented simply by a table showing all indices of likeness on every roll call, but this is manifestly unsatisfactory. An urban-rural conflict scale might be constructed and used for each roll call. A frequency distribution of scale values could then be presented, but construction of such a scale is a serious undertaking itself. Alternatively, a frequency distribution of indices of likeness may be presented. The difficulty with this is that ambiguous results can appear; that is, different patterns of behavior can produce the same or similar frequency distributions if indices from different roll calls are summarily combined. It was decided to try some frequency distributions of indices in each house and to reject them if ambiguous results appeared.

Frequency distributions for each house in each session were prepared showing the percentage of indices in given ranges. Rather than present eight tables the figures in the four House tables were averaged as were the figures in the four Senate tables with the results that are shown in the two tables below. An alternative procedure would be to make a frequency distribution without reference to sessions, but this creates the possibility that one session marked by frequent dispute and unusual relationships might unduly distort the picture.

Table 6. Ohio House: Percentage of Roll Calls With an Index of Likeness for Indicated Groups in Given Ranges*

Range	UD/UR	RuD/RuR	UD/RuD	UR/RuR
0- 19	9	11	1	0
20- 39	8	9	4	1
40- 59	14	13	11	7
60- 79	24	26	23	20
80-100	45	41	61	72

Legend: D - Democrats; R - Republicans; U - Urban; Ru - Rural

* The table is based on analysis of all roll calls on which the minority was equal to 10% or more of the majority. All figures are averages of four sesssions, 1935, 1949, 1955, and 1957.

Table 7. Ohio Senate: Percentage of Roll Calls With an Index of Likeness for Indicated Groups in Given Ranges*

Range	UD/UR	RuD/RuR**	UD/RuD**	UR/RuR
0- 19	19	15	0	1
20- 39	18	11	3	2
40- 59	16	27	9	7
60- 79	20	20	21	24
80-100	27	27	67	65

Legend: D - Democrats; R - Republicans; U - Urban; Ru - Rural

* The table is based on analysis of all roll calls on which the minority was equal to 10% or more of the majority. All figures are averages of four sessions, 1935, 1949, 1955, and 1957, with the exception stated below.

** These are figures for the 1935 session only since there were either no rural Democrats or too few in the 1949, 1955, and 1957 sessions to permit or justify comparison of the group with other groups.

The results are not ambiguous so far as the presence of urban-rural factionalism is concerned; it is not there. Consider the House: conflict between urban Democrats and rural Democrats is rare, and conflict between urban Republicans and rural Republicans is even more rare. On the other hand, urban Democrats and urban Republicans had on the average in the four sessions indices of likeness of less than 40 on almost one-fifth of the roll calls as did the rural Democrats and rural Republicans. None of these conditions are characteristic of urban-rural factionalism. They demonstrate its insignificance.

Consider the Senate: once again it can be noted that urban Democrats and rural Democrats are very much alike in their behavior as are also urban and rural Republicans. In contrast to this appearance of harmony within each party, urban Democrats and urban Republicans had indices of likeness of less than 40 on 37% of the roll calls indicating clearly that being from the city did not establish much of a bond between them; and rural Democrats and rural Republicans had very low indices of likeness on about one-fourth of the roll calls on which it was possible to compare them. The number of roll calls in a typical meeting of the Senate on which there could be urban-rural conflict is not larger than two or three per cent, and it might not be that large. It is my conclusion that urban-rural factionalism is very insignificant although urban-rural conflict may occur occasionally.

This conclusion is in agreement with the conclusion of a recent study of Illinois and Missouri.[18] It appears that urban-rural factionalism may be generally insignificant in the operations of two-party legislatures. A study of the Alabama legislature suggests that the statement might be broadened to include one party legislatures as well.[19] It was found that in Alabama "Conflict between urban and rural representatives failed to develop on the majority of roll calls during 1955 and

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[18] David R. Derge, "Metropolitan and Outstate Alignments in Illinois and Missouri Legislative Delegations," American Political Science Review (December, 1958), pp. 1051-1066.

[19] Murray Clark Havens, City Versus Farm? (University, Alabama: Bureau of Public Administration, University of Alabama, 1957).

1956...."[20] Interestingly, there was no urban-rural conflict on such things as agriculture, municipal legislation, labor, education, health, and welfare; and very little conflict on taxes and appropriations.

The explanation may be that party is a force strong enough to suppress urban-rural factionalism. This is plausible in regard to two-party legislatures, but makes little sense as an explanation for the Alabama case. An alternative explanation is urban and rural interests distinguished from party interests are not very strong and/or do not conflict seriously enough to put their representatives in opposition to each other or to prevent them from arranging satisfactory compromises before roll calls occur. I am inclined to accept the latter explanation. If this is true, then some widely held views about the character and importance of these interests in American politics should be revised or rejected.

Data in tables 6 and 7 suggest that each party is united and in rather frequent conflict with the other. There is an alternative explanation which is that neither party is frequently united but that the urban and rural wing of each is disunited in about the same way. Thereby high indices of likeness are produced. That is not probable, and as the explanation is developed it appears more and more improbable. Nevertheless, the possibility of alternative explanations requires further analysis before it can be concluded that the party groups in the legislature are responsible ones.

It was decided to count the number of times a majority of one party opposed the majority of the other and to measure the internal cohesion of both parties on each of the roll calls that had been examined previously. The device adopted for measuring cohesion was the index of cohesion, which is computed on any given roll call by subtracting 50 from the percentage of yeas or nays, whichever is larger, and by multiplying by two. Thus a group divided 50-50 on a roll call has an index of zero. A group united in support or opposition to a measure has an index of 100. A group voting 75-25 in favor of a proposal has an index of cohesion of 50; it is midway between complete internal agreement and disagreement. Democratic and Republican indices of cohesion were calculated for each roll call in the four sessions, and tables were constructed for both House and Senate by session. A partial summary of the analysis is given by the following table.

Table 8. Party Voting in the Ohio General Assembly, 1935, 1949, 1955, 1957[1]

Year	1935	1935	1949	1949	1955	1955	1957	1957
Body	House (N=182)	Senate (N=66)	House (N=216)	Senate (N=149)	House (N=163)	Senate (N-117)	House (N=173)	Senate (N=83)
Parties Opposed[2]	33%	42%	50%	60%	35%	56%	37%	41%
Party Votes[3]	7%	8%	11%	11%	4%	25%	6%	17%
Near Party Votes[4]	2%	9%	12%	12%	4%	12%	4%	7%
Average Democratic Index of Cohesion	57	66	72	65	57	69	53	70
Average Republican Index of Cohesion	54	62	57	72	62	77	50	74

1. The table is based on analysis of all roll calls on which the minority was equal to 10% or more of the majority.

2. The percentage of roll calls on which the majority of one party opposed the majority of the other. (Notes continued on page 18)

3. The percentage of roll calls on which the majority of one party opposed the majority of the other, each with an index of cohesion of 80 or above.

4. The percentage of roll calls on which the majority of one party opposed the majority of the other, each with an index of cohesion of 60 to 80.

Inspection of the table shows that party opposition votes are fairly common; the number ranges from 33% in the 1935 House to 60% in the 1949 Senate. Party votes, however, are less common, ranging from 4% in the 1955 House to 25% in the 1955 Senate. The appearance of party conflict is strengthened if near party votes are added to party votes. There is justification for this since an index of cohesion as low as 60 reflects an internal division no greater than an 80%-20% split. Strangely the percentage of party and near party votes is considerably higher in the Senate than in the House. It should be noted, however, that more House than Senate roll calls were analyzed in each session; so the difference in the actual number of party and near party votes is less great than appears at first glance. Interpretations of this data will vary, but I interpret it as indicating that party conflict is frequent in the Ohio legislature and that the parties attain high levels of internal unity often enough when in opposition to each other to provide definite alternatives to the voters of the state.[21]

There are several explanations which can be advanced singly or in combination to account for the existence of party responsibility in a legislative body. One possible explanation is that legislators represent districts which differ from the districts represented by members of the other party but similar to districts represented by members of their own party. Internal unity and external conflict is the product of similar and differential pressures. This proposition is persuasive, but it will not stand alone as an explanation for party voting in the Ohio General Assembly. In that body there are both urban and rural Democrats and Republicans, and there can be no pretense that all Democratic districts are similar or that all Republican districts are similar. Still there is abundant evidence in this study to show that each party has a high degree of internal unity and the capacity to differ vigorously with its opposite number. I do not suggest that this explanation based on differences in constituencies be rejected, but I do suggest that it be used with caution and discretion. One of the other explanations for party responsibility is that the members of each party have a strong common interest in the outcome of the next election and will act together for their own general welfare. The presupposition is party competition, but that is the reality of Ohio politics.

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[20] Ibid., p. 49.

[21] Materials for comparative analysis can be found in the following: Malcolm E. Jewell, "Party Voting in American State Legislatures," American Political Science Review (September, 1955), pp. 773-792; W. J. Keefe, "Party Government and Lawmaking in the Illinois General Assembly," Northwestern University Law Review (March, 1952), pp. 55-71; Keefe, "Parties, Partisanship, and Public Policy in the Pennsylvania Legislature," American Political Science Review (June, 1954), pp. 450-464; Duane Lockard, New England State Politics (Princeton, N. J.: Princeton University Press, 1959).

Table A. Party Competition in Ohio[1]

Year	Dem % Pres Vote	Dem % Gub Vote	Dem %[2] House Seats	Dem %[2] Sen Seats	Year	Dem % Pres Vote	Dem % Gub Vote	Dem %[2] House Seats	Dem %[2] Sen Seats
1865		46			1904	36			
1867		50-			1905		52	48	50
1868	46				1908	47	51	39	41
1869		49			1910		56	59	56
1871		48			1912	60	62	72	79
1872	46				1914		49	46	39
1873		50+			1916	54	50+	44	69
1875		50-			1918		51	38	36
1876	49				1920	40	47	9	3
1877		52			1922		51	21	11
1879		49			1924	29	54	15	6
1880	48				1926		51	24	5
1881		48			1928	35	45	8	0
1883		50+	57	70	1930		53	45	44
1884	48				1932	52	54	62	85
1885		49	39	43	1934		52	50-[3]	59
1887		48	41	56	1936	61	52	76	86
1888	49				1938		48	26	23
1889		51	53	53	1940	52	44	43	42
1891		49	33	32	1942		40	18	15
1892	50-				1944	50-	52	35	39
1893		45	20	16	1946		49	12	11
1895		44	22	17	1948	50+	54	51	58
1896	47				1950		53	26	21
1897		48	43	50	1952	43	56	24	30
1899		47	41	35	1954		54	35	36
1900	47				1956	39	44	30	35
1901		46	38	38	1958		57	56	61
1903		44	20	12					

[1] All figures are percentages of the two-party vote or of seats won by the major parties. Successful independent candidates, very few in number, were treated as follows: (1) counted as Republican if the independent defeated a Democrat; (2) conversely, counted as Democratic if the independent defeated a Republican; (3) not counted at all if the independent won a three-cornered contest.

[2] It was not possible to extend the legislative series farther without information which is apparently available only in the office of the Secretary of State.

[3] Organized by the Democrats.

Table B. Composition of the Ohio Gubernatorial Vote and Democratic Percentage of the Two-Party Vote in Urban and Rural Areas*

Year	Composition of Vote % Urban	% Rural	Democratic Percentage Urban	Rural
1875	13	87	45	50
1897	27	73	48	48
1908	32	68	54	49
1910	36	64	57	55
1920	44	56	39	53
1922	43	57	51	50
1924	47	53	52	57
1926	45'	55	50	51
1928	51	49	45	44
1930	57	43	53	52
1932	57	43	53	56
1934	58	42	54	49
1936	60	40	53	50
1938	59	41	51	43
1940	62	38	46	43
1942	60	40	42	36
1944	64	36	57	42
1946	64	36	52	43
1948	64	36	57	48
1950	67	33	56	45
1952	67	33	59	50
1954	68	32	58	46
1956	68	32	48	35
1958	68	32	60	49

* The basis is continuous from 1920 to 1958. Some additional depth is given by inclusion of a few earlier elections.

Table C. Percentage German and Democratic Rank Among Rural Counties of the 15 Most German Ohio Rural Counties*

County	% Ger	Rank 1897	1916	1920	1934	1938	1940	1942	1958
Ottawa	31.29	8	8	40	2	23	18	15	11
Erie	26.97	40	32	46	10	16	20	20	27
Henry	18.27	7	41	56	8	57	57	45	67
Sandusky	14.68	58	25	17	13	69	56	34	48
Crawford	13.66	4	3	2	18	9	32	21	44
Defiance	13.34	12	22	25	16	53	58	44	36
Auglaize	13.23	6	10	39	35	35	46	23	45
Mercer	11.88	3	5	9	9	8	40	17	12
Seneca	10.91	21	15	18	22	21	52	36	39
Huron	9.91	61	68	59	34	52	49	66	42
Wood	9.44	44	54	76	31	70	61	60	39
Shelby	9.40	11	18	41	6	19	15	8	28
Putnam	8.30	5	7	11	1	31	21	12	24
Wyandot	8.20	15	11	14	29	17	44	32	49
Richland	8.11	20	21	15	12	14	16	14	29
Average Rank		21.0	22.67	31.20	16.40	32.93	39.0	29.8	36.0

* The German population of each county is defined as those persons who at the time of the 1910 census had been born in Germany or had been born in the United States of two German born parents. The percentage is a percentage of the 1910 population.

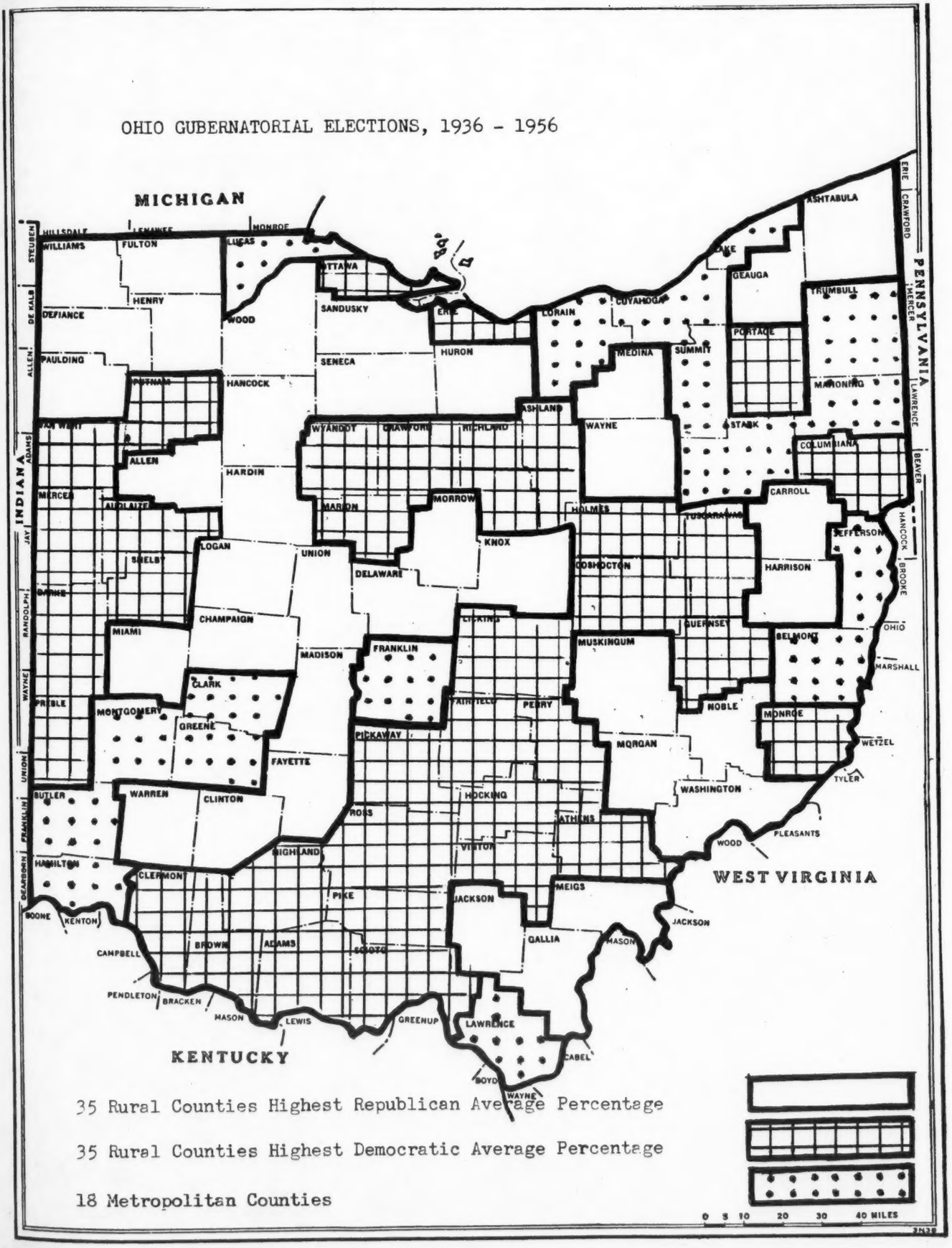
Table D. Voters and Representation in the Ohio House, 1948-1958*

	Urban Dems	Urban Reps	Rural Dems	Rural Reps
1948				
Voters	968,395	796,813	348,212	533,806
% Urban or Rural Voters	54.9%	45.1%	39.5%	60.5%
% Urban or Rural Seats	79.7%	20.3%	25.0%	75.0%
% All Voters	36.6%	30.1%	13.2%	20.2%
Seats	51	13	18	54
% All Seats	37.5%	9.6%	13.2%	39.7%
1950				
Voters	752,471	806,492	330,304	446,508
% Urban or Rural Voters	48.3%	51.7%	42.5%	57.5%
% Urban or Rural Seats	41.4%	58.6%	12.5%	87.5%
% All Voters	32%	34.5%	14%	19%
Seats	25	37	9	63
% All Seats	18.5%	27.5%	6.5%	47%
1952				
Voters	936,878	1,045,492	329,801	688,665
% Urban or Rural Voters	47.5%	52.7%	32.5%	67.5%
% Urban or Rural Seats	37.1%	62.9%	14.3%	85.7%
All Voters	31%	35%	11%	23%
Seats	23	39	10	60
% All Seats	17.5%	30%	7.5%	45.5%

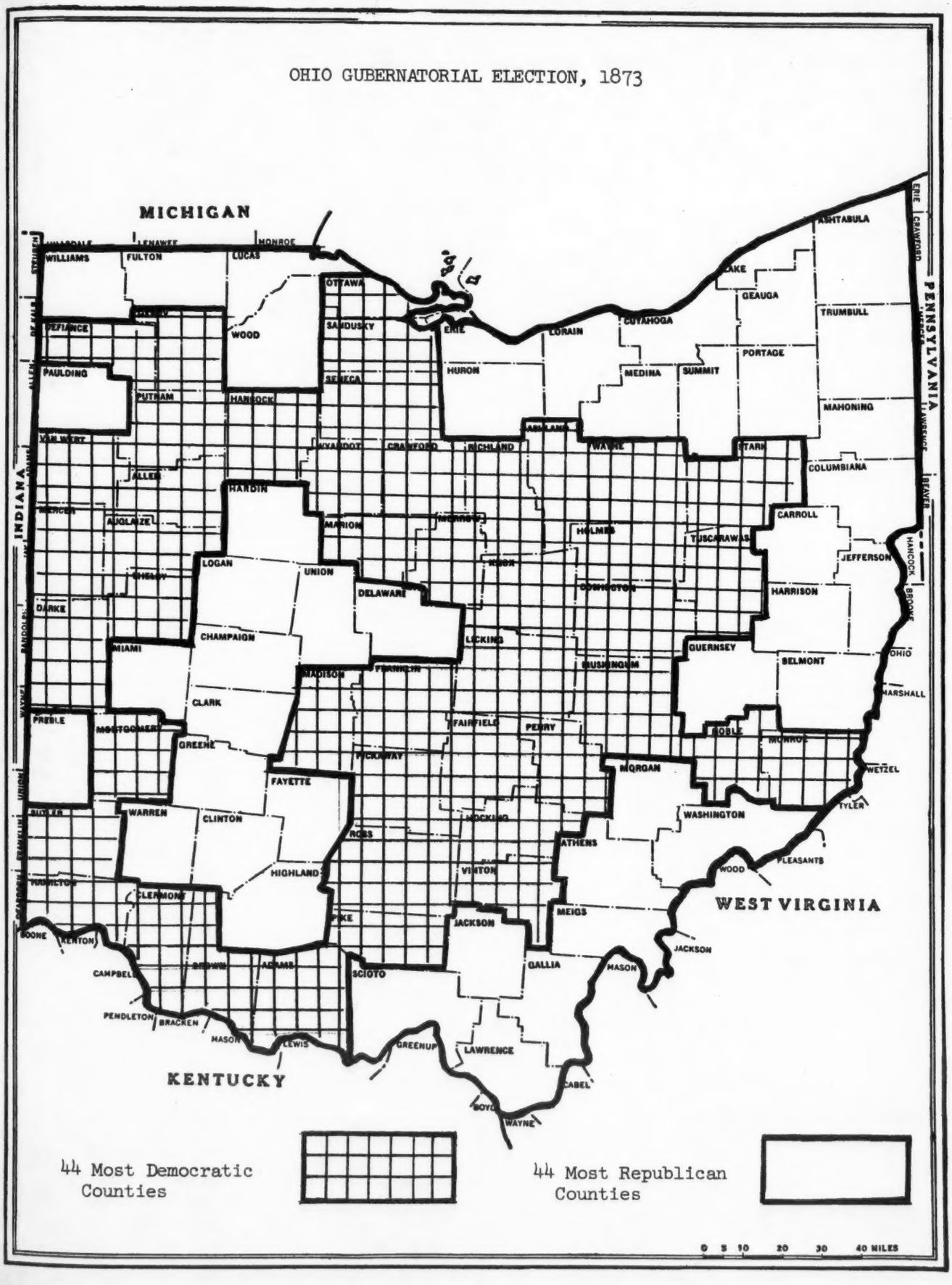
* This table is based on voters not votes. The reason is that in counties with more than one representative the voters are given a number of votes equal to the number of seats to be filled; so the number of votes cast will be considerably larger than the number of voters. In order to make the returns from the various counties comparable, it is necessary to consider the number of voters and not the number of votes. This is obtained by dividing the number of votes cast in each county by the number of seats to be filled.

	Urban Dems	Urban Reps	Rural Dems	Rural Reps
1954				
Voters	701,747	710,179	453,200	897,926
% Urban or Rural Voters	49.7%	50.3%	33.6%	66.4%
% Urban or Rural Seats	51.5%	48.5%	18.6%	81.4%
% All Voters	25.5%	25.8%	16.4%	32.6%
Seats	34	32	13	57
% All Seats	25%	23.5%	9.6%	41.8%
1956				
Voters	1,002,595	1,042,293	356,687	661,267
% Urban or Rural Voters	49.0%	51.0%	34.0%	65.0%
% Urban or Rural Seats	44.9%	55.1%	15.7%	84.3%
% All Voters	32.7%	34.0%	11.6%	21.6%
Seats	31	38	11	59
% All Seats	22.3%	27.3%	7.9%	42.4%
1958				
Voters	1,066,270	763,476	424,491	543,315
% Urban or Rural Voters	58.3%	41.7%	43.9%	56.1%
% Urban or Rural Seats	76.8%	23.2%	35.7%	64.3%
% All Voters	38.1%	27.3%	15.2%	19.4%
Seats	53	16	25	45
% All Seats	38.1%	11.5%	18.0%	32.4%

OHIO GUBERNATORIAL ELECTIONS, 1936 - 1956



OHIO GUBERNATORIAL ELECTION, 1873



ROLE OF THE NATIONAL SECURITY COUNCIL IN THE FORMULATION OF NATIONAL POLICY

by
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INTRODUCTION

This paper divides itself into two parts. The first part will deal with the structure and functions of the National Security Council. The second part will deal with a number of issues relating to the work of the National Security Council which have to a greater or lesser degree been the subject of some public debate. It is hoped that this manner of presentation will provide the basis for meaningful panel discussion of the role of the National Security Council in the formulation of national policy. Indeed, the paper has been prepared more as a stimulant to discussion than as a definitive document.

It seems appropriate at the outset to indicate areas of possible interest which will not be considered in this paper.

First, there will be no treatment of the substantive matters which have been or are now the subject of National Security Council consideration. Were I inclined to discuss matters of substance in this paper it will be understood that I cannot do so because the security classification of National Security Council documents and the privileged character of advice given to the President of the United States would preclude such discussion.

Second, this paper will not deal with the formulation of policy at the departmental level in the Executive Branch, although the effective formulation of such policy is obviously an activity essential to normal departmental responsibilities as well as to departmental participation in National Security Council affairs.

Third, this paper will not concern itself with the evolutionary history of the National Security Council in its twelve years of existence, but only with the National Security Council as it now operates. I recognize that I have somewhat of an advantage in that there are no other discussants with current personal knowledge or experience. As some of you may know, I have been associated with the Council machinery for just over four years:

first, as Assistant Secretary of Defense when I was a member of the Planning Board; second, as Director of the Office of Defense Mobilization, when I was a member of the Council; and since July of 1958 as Special Assistant to the President for National Security Affairs.

Fourth, the paper deals only with the formulation of policy at the National Security Council level and there will therefore be no description of the implementation or execution of policy and such elements of the National Security Council structure as are concerned with this aspect of the matter. Specifically, for example, the paper will not discuss the activities of the Operations Coordinating Board.

I. FUNCTIONS AND STRUCTURE OF THE NATIONAL SECURITY COUNCIL

A. Statutory Functions and Duties of the Council

The National Security Act of 1947, as amended, establishes the National Security Council, the Central Intelligence Agency and the Office of Civil and Defense Mobilization, as well as the Department of Defense. All of this was in recognition of needs exposed during World War II for unity, integration and coordination in all aspects of national security. Since 1949, the National Security Council has been a part of the Executive Office of the President.

The Preamble to the Act declares "the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security . . ."

Title I of the Act, entitled "Coordination for National Security," states that the function of the Council is

> "to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security."

Title I of the Act further states that the duty of the Council is

(1) "to assess and appraise the objectives, commitments and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith;

(2) "to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith;"

(3) to perform "such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security;" and

(4) from time to time to "make such recommendations and such other reports to the President as it deems appropriate or as the President may require."

B. Concept of Council Operations

Explicit or implicit in the government statute are these basic concepts which govern the operations of the National Security Council and its machinery:

(1) to deal only with issues affecting national security;

(2) to be advisory to the President in his determination of national security policy;

(3) to seek to integrate domestic, foreign, and military policies so as to enable Government agencies to cooperate more effectively in national security matters;

(4) to assist, according to Presidential direction, in coordinating policies of Government agencies relating to the national security;

(5) to be concerned with both our actual and our potential military power.

C. Council Structure

The National Security Council structure in the formulation of policy operates through the Council itself, including special committees and consultants, and the Council's subsidiary organizations, including the Planning Board, the National Security Council Staff, and special intelligence and internal security committees. The Joint Chiefs of Staff are the principal military advisers to the Council and the Central Intelligence Agency is its intelligence adviser.

D. Council Procedures

The Council mechanism aids the President in formulating and coordinating national security policy and is the channel through which recommendations for national security policy reach the President for his decision.

The President has determined that he will not assign an area of national security policy formulation permanently as the responsibility of a department, agency, or individual outside the NSC mechanism or make decisions on national security policy -- except in special cases or urgency -- outside the framework of the Council.

Except as directed by the President, matters to be considered by the Council in so far as possible deal with the making or alteration of broad policies -- either policies for the future or policies immediately required by currently developing events -- and with reports on the progress of carrying out approved policies. The Council does not concern itself with interagency conflicts not involving policy considerations.

As President Eisenhower has put it, the Council is a corporate body, composed of individuals advising the President in their own right rather than as representatives of their respective departments and agencies. Their function should be to seek, with their background of experience, "the most statesmanlike solution to the problems of national security, rather than to reach solutions which represent merely a compromise of departmental positions." The same concept is equally applicable to advisory and subordinate groups, such as the NSC Planning Board, although the members of the latter board are responsible also for stating the views of their respective departments and agencies.

Attendance at Council meetings is a matter of special concern and is limited to the minimum number possible, consistent with the President's requirements and the agenda under consideration.

Occasionally, but by no means regularly, the President will convene a Council meeting with only the statutory members present, who are: The President, Vice President, Secretary of State, Secretary of Defense and the Director of the Office of Civil and Defense Mobilization; and the statutory advisers, that is, the Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence; plus staff and one or two persons who have an interest in and a knowledge of the particular matter under consideration. These special meetings are convened when the matter before the Council is of a highly sensitive nature. However, normally in addition to the statutory members and advisers, there are present at Council meetings the Secretary of the Treasury; the Director of the Bureau of the Budget; and the Chairman of the Atomic Energy Commission.

In addition to the foregoing, the following attend: The Assistant to the President; the Director, United States Information Agency; the Under Secretary of State; the Special Assistants to the President for Foreign Economic Policy, and Science and Technology; the White House Staff Secretary; the Special Assistant to the President for National Security Affairs; the Special Assistant to the President for Security Operations Coordination; the Executive Secretary and the Deputy Executive Secretary, National Security Council. For agenda items which are the subject of official interest to them, the Attorney General and the Administrator, National Aeronautics and Space Administration are invited. Of course, for any agenda items that the President may determine, ad hoc members participate.

In order to bring to the Council deliberations a fresh, frequently-changing, non-governmental point of view and to gain public understanding of national security problems through the use of private citizens of stature, from time to time the President appoints one or more Consultants as informal advisers to the Council. This procedure is used so that no public impression arises that any such persons have been interposed between the President and his responsible Cabinet Ministers. Therefore, as a general rule, such Consultants appear at a Council meeting only to present and discuss their report.

Examples of the use of such Consultants are:

(1) to consider and report to the Council on some proposal, either specific or general, after which the Consultant's report is reviewed by the departments and agencies concerned.

(2) to review for the Council integrated recommendations proposed by the NSC Planning Board.

In the course of the review of a recent fundamental policy paper, 23 Consultants were used. They first met with the Planning Board in groups of four or five at a time and gave their views on the existing paper up for review. Then the Planning Board devoted all or part of 27 meetings over many weeks to producing a revised paper, taking into account the comments of the Consultants and the recommendations of the responsible agencies. Subsequently, a large number of the Consultants came in again, met in a body with the Planning Board, and made further comments on the Planning Board's revised draft. In this way several of the ideas of the Consultants formed the basis for policy guidance which was ultimately incorporated into the final approved paper.

I may say that the reconstitution of the President's Science Advisory Committee and its elevation, in December 1957, from the then Office of Defense Mobilization to make it advisory directly to the President has diminished the need for National Security Council Consultants which existed in earlier years, as well as the need for certain kinds of formalized reports from Consultants.

The Council regularly meets each Thursday at 9:00 a.m. Meetings normally do not exceed two hours. Special Council meetings are called by the Special Assistant for National Security Affairs at the request of the President. The agenda for a Council meeting is determined by the President, acting through the Special Assistant for National Security Affairs.

One feature of every Council meeting is a regular briefing by the Director of Central Intelligence. He gives a summary of important developments that are occurring throughout the world, and he gives particular attention to those areas which are on the Council agenda that day.

Except in special cases of urgency, security policy recommendations by the Council to the President are based on written papers which are prepared by the Council's Planning Board in deliberations at which all essential facts are assembled and the views of all affected departments and agencies are sought, debated and integrated. The papers are of four

general types: fundamental policy; geographical policy, on a single foreign country or on a region; and functional papers not related to a specific geographical area. These papers are then circulated and studied, in advance of the Council meeting, by those who are to attend the meeting.

After a Planning Board paper has been circulated, the JCS meet formally to discuss it and prepare written views, which are circulated to the Council in advance of the meeting. In addition, the Chairman of the JCS may elaborate orally at the Council on the military point of view. On occasions when a matter before the NSC has particular military importance, the Secretaries and the Chiefs of Staff of the three military departments are also invited to attend the Council.

E. NSC Planning Board

The NSC Planning Board membership is composed of representatives and observers, generally at the Assistant Secretary level, from the same departments and agencies which are represented at the Council. It meets regularly on Tuesday and Friday afternoons, from 2 o'clock till 5 -- or such further time as I may keep them in session. Normally, consideration of a geographical policy starts off with a study of the latest National Intelligence Estimate on the country and a briefing by the CIA adviser on the most recent developments in the area. The Planning Board normally does not send a paper forward without meeting three or four times on it. However, in crisis situations the Planning Board may have to complete a paper in one meeting; and on occasion the NSC has had to take action without referring the matter to the Planning Board at all.

Subsidiary to the Planning Board are the Planning Board Assistants, consisting of people from the same agencies which are represented at the Planning Board, but at the next subordinate level. After the Planning Board has discussed a paper, it is usually turned over to the Board Assistants to be redrafted. Normally the Board Assistants meet four to eight hours on a paper before sending a redraft back to the Planning Board.

F. Officers of the Council

The President is Chairman of the National Security Council and presides at each Council meeting which he attends. (Since I have been Special Assistant, there have been forty-five meetings of the NSC and the President has presided at forty-three of them.) The Special Assistant for National Security Affairs is the principal supervisory officer of the

National Security Council and serves as Chairman of the Council's Planning Board. The President looks to the Special Assistant at Council meetings to present the items upon the Agenda, to brief the Council on their background, to explain any "splits" and to initiate discussion. Views are sought around the table so as to bring out relevant facts and opinions and so as to give those present an opportunity to participate in making policy which they must later carry out. The Presidential decision may be announced at the meeting, or on further consideration of the recommendations made to him at such a meeting.

There is an Executive Secretary (provided by statute) and a Deputy Executive Secretary of the National Security Council, appointed by the President. Under the supervision of the Special Assistant for National Security Affairs, the Executive Secretary is the head of the NSC Staff, acts for the Special Assistant in his absence (including acting as Chairman of the Planning Board), and advises and aids him in the performance of his duties.

The principal duties of the Special Assistant for National Security Affairs include: responsibility for agenda, and presentation of material for discussion at Council meetings; as necessary, briefing the President before Council meetings on agenda items; determining, in collaboration with the NSC Executive Secretary, the agenda and scheduling of work for Planning Board meetings; presiding at, and participating in, Planning Board meetings; supervising the work of the NSC Staff through the Executive Secretary; attending and participating in meetings of the Operations Coordinating Board, the Council on Foreign Economic Policy and other relevant groups; attending as an observer at meetings of the Cabinet; and such other assignments related to national security affairs as the President may direct.

II. SOME ISSUES WHICH HAVE BEEN THE SUBJECT OF PUBLIC DEBATE

With this brief description of the structure and functions of the Council, I now turn to some of the issues which have been the subject of public discussion to which some members of the Panel have contributed.

A. It has been said that use of the NSC for policy formulation under President Eisenhower has tended to cut off cross-fertilization of ideas between departments and that cross-contact between the personnel of different departments has been avoided. It is said that Departmental staffs do

not exchange information with each other, but rather tend to save their best "ammunition" for use before the Council.

Such statements are based on misinformation as the Council mechanism currently operates. I know of a large number of meetings, both formal and informal, which take place between, for example, representatives of the State and Defense Departments from the Secretary level on down. In fact, such direct liaison between departments is actively encouraged as providing a firm foundation for policy formulation. Frequently the Council or the Planning Board will refer a problem to the interested departments for joint study and report.

As far as the Planning Board is concerned, I can assure you that no departmental representative is reticent in marshaling the arguments in support of any position he sees fit to take. Moreover, it is the established practice for Planning Board members to bring experts from their own staffs. For example, when a paper on a foreign country is being discussed, the State Department will bring the area people concerned and the Defense Department may bring the people who deal with the Military Assistance Programs.

It is seldom that arguments are made in the Council -- except by the President or Vice President -- which have not been previously discussed in the Planning Board; although I will say that Council members do not always fully espouse the position taken by their Planning Board representatives and are sometimes persuaded by their own wisdom or by the persuasiveness of others to a different view.

B. It has been said that the NSC is a Committee and suffers from the vice of the committee system.

If the purpose of that criticism is to argue against the use of committees in Government, I can only point out that the functioning of Government involves the responsibility and knowledge of a number of departments which can be more effectively integrated through committee meetings than by a series of separate consultations.

However, in so far as the NSC is concerned, the statement is misleading because it suggests that the NSC is no more than a high-level interdepartmental committee. The NSC is more than an interdepartmental committee because, first of all, its chairman is the President. As indicated

earlier, President Eisenhower expects the members of the NSC to confront problems broadly -- just as he must -- and not narrowly from the sole point of view of departmental responsibility. On occasion the President has specifically asked the members of the Council for advice to him which would represent their own best personal judgment, rather than simply the advice which may have been derived from departmental staff analysis.

C. It has been stated that the NSC is able to handle the continuation and development of established policies, but has failed in the task of initiating new policies.

I cannot agree with such a statement. Since I have been in my present position, the Council has initiated a number of new policies on diverse subjects. As the technology of weapons systems has changed, as new nations have come into being and as the pattern of world events has shifted, the Council has sought to keep ahead of events by developing new policies. While I cannot go into substance, I will say, for example, that NSC interest in outer space antedated SPUTNIK.

Before the end of President Eisenhower's first administration, virtually every policy of the previous administration had been reviewed and revised by the new members of the Council, in some cases by developing substantially new policies. Since that time, most of the policy statements approved by the President during his first term have undergone at least one revision and, in many cases, more than two.

D. It has been said that the members of the Council are not free agents but are the instructed ambassadors of their respective departments.

While it is both true and desirable that a Council member comes to meetings with a clear idea of the particular interest and the background of experience of his own department in a given policy position, nevertheless no sophisticated observer can really believe that the Secretary of State can be "instructed" by any subordinate in his department. Very often a Council member, convinced of the wisdom of the advice given him by his own departmental staff, will argue vigorously in the Council for the departmental view. Equally often, having heard the views of other

members of the Council, he will depart in some measure from his original position in favor of a view which represents the national, rather than the departmental, interest.

E. It has been said that while there have been many split recommendations on minor issues, few alternative proposals on basic policy have been advanced.

It is true that despite the best efforts of the Chairman of the Planning Board, policy papers go to the Council from time to time with split recommendations on minor issues. It is not true that major splits are not generally reflected in such papers. In fact, more than half the policy statements which are sent to the Council from the Planning Board contain split views largely on important issues on which one or more of the NSC agencies have indicated a strong divergence of opinion. A recent paper dealing with a fundamental policy contained 19 splits when it was sent to the Council from the Planning Board, and required 5 successive Council meetings before final approval.

Additionally, on many occasions the Planning Board will present to the Council, without recommendations, a special discussion paper consisting of a series of seemingly feasible alternatives, with the pros and cons of each carefully set forth. The Council will discuss the alternatives and thereby provide guidance to the Planning Board as a basis for developing a draft policy statement.

Moreover, through the use of Consultants and continuing study of policy suggestions put forward by Congress, the press, educational institutions and in letters, the NSC machinery gives frequent consideration to many alternative policy proposals originating outside Government.

F. It has been said that an air of diplomatic politeness permeates generally the deliberations of the NSC and that members hesitate to antagonize each other by speaking their minds freely in criticism of their colleagues' policies.

It is true that the members of the Council observe the ordinary decencies of civilized discussion. But would anyone suppose that a Council, composed of such men as Charles E. Wilson, Arthur Radford,

George Humphrey, Harold Stassen, Arthur Flemming and John Foster Dulles -- to mention past members only -- would conduct their affairs with such extreme politeness as to conceal their real differences of view? On the contrary, so freely do many members speak their minds that on occasion vigorous discussion has been brought to an end only when the President or the Special Assistant introduces a light touch.

G. It has been said that a strong agency whose Chief has the ear of the President has a much better chance to get what he wants by bringing a policy recommendation directly to the President, rather than having it "processed out of recognition" by the machinery of the NSC.

It goes without saying that any member of the Cabinet has the right to bring his problems directly to the President, and there are, of course, some decisions which the President makes by dealing with one Cabinet member alone. I do not believe, however, that in most instances involving national security policies of interest to more than one government agency, the agency head really has a much better chance "to get what he wants" by going directly to the President. Midnight decisions obtained in this manner often have a way of becoming "unstuck." Moreover, President Eisenhower has made it a practice not to determine, on the unilateral recommendation of one department head, national security matters which are clearly of interest to more than one responsible department.

H. A proposal for improving the National Security Council structure which has frequently been advanced is the creation of a large super-staff. Sometimes this proposal has taken the form of a recommendation that the existing NSC Staff be broadened in size and functions. At other times, the proposal has been that there be created an entirely new body, a Presidential Staff for National Security Matters.

There is room for a wide diversity of opinion about such a proposal. I happen to believe firmly that those who are charged with day-to-day operations in the various departments and agencies are the persons best qualified to assist in the formulation of national security policies which they will ultimately be asked to carry out. In this way, each interested department and agency shares in formulating the recommendations which go to the Council, has full opportunity to be heard at the Planning Board and Council levels, and has the right to express any disagreement which it may have with the proposed recommendations.

A large super-staff, once established, is likely to settle into a relatively fixed pattern of advocating particular policy approaches or pet projects, thereby becoming just another participating agency. Moreover, I do not believe that the American people would approve or be best served by experimentation with ivory tower policy proposals when they involve the security or even the survival of our nation.

Also it should be pointed out that the present NSC Staff does perform the function of a national staff by individual, objective analysis of every policy paper that goes through the Planning Board to the Council. Although the NSC Staff does not itself make policy recommendations, it does scrutinize departmental proposals and suggest policy alternatives or additions that merit consideration.

The NSC Staff has always been and continues to be small. One reason for this is that the resources of the departments and agencies, including their operating personnel, are always available to and are constantly used by the Planning Board. Such operating personnel frequently attend and participate in meetings of the Planning Board in which matters within their competence are under consideration. This procedure has made it unnecessary to have a larger, independent staff for the Council.

I. It has been said that Consultants are too far removed from Executive Branch responsibility; that they are out of touch with the real problems with which Executive Branch officials must deal; and that therefore they are not competent to make policy recommendations to the President and to the Council.

In response I can only say that such a view supports the position that policy should be formulated within the government by those who are responsible for day-to-day operations in the various departments and agencies. By the same token, the position that the Consultants are too far removed from operations would also argue against the proposal for a high-level Presidential super-staff.

J. It has been said that Council members are too busy with their manifold departmental responsibilities, their pressing social schedules and their necessary travel abroad to engage in detailed national security policy planning.

In response, I would like to say that the heavy responsibility of the Council members is one of the reasons for the organization of the National Security Council mechanism as it is now constituted. It is the duty of the Special Assistant to the President for National Security Affairs, working in conjunction with the Planning Board, the NSC Staff, the Board Assistants and experts from the interested departments as required, to shape policy proposals and to identify issues so that the President and the National Security Council can, by taking about two hours time from their other pressing obligations on Thursday morning every week, reach informed decisions upon broad national security policy. The Council itself does not and should not engage in detailed planning.

CONCLUSION

Let me make it clear that I would never contend that the Council and its machinery are perfect. Indeed, I do not believe that it is possible to have a mechanism which would be free from imperfection in a democratic society and with a republican form of government.

One of the values of the Council and its functioning, to my mind, is that policy decisions taken in this mechanism are fully understood by the heads of the departments primarily concerned; the policy is recorded; and, perhaps as important as either of the foregoing, by reason of participation the department heads find themselves with the kind of a commitment to the policy decision which is not always certain when decisions are unilaterally taken with others.

I believe that the policies of this Administration have been sound. However, in a free society there is room and opportunity for disagreement. If I were to be thoroughly candid, I would have to say that I suspect that the unhappiness of any knowledgeable person with respect to the NSC and its procedures really derives, not from a concern about how the machinery works, but what it produces. This, then, is substantive disagreement. For those, the only solution would seem to be to elect a different President. In any event, any President is going to shape and use the machinery in his own way so as to assist him in making the ultimate decisions; for that is where the responsibility inescapably lies.

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PROBLEMS OF TEACHING SOVIET FOREIGN RELATIONS

by

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1. Number of Courses Taught.

When the World Peace Foundation made a survey of courses on international affairs in American colleges in 1930-31, it found only one lonely course dealing with Soviet foreign relations or Soviet government. Taught by Professor Paul Haensel at Northwestern, this two-hour course divided its time equally between Soviet government and foreign affairs. Thus the study of Soviet foreign relations in this country was about as near zero as it is possible to get--namely, one semester hour.

For comparison, in the same year a total of 42 schools offered courses in the government of England or the British Empire, and six had courses on British foreign relations.

In the field of history the Russian cupboard was not so bare. Thirty-one schools had courses in Russian history, out of the total of 465 accredited institutions of higher education covered in the survey.[1]

It might well be argued that the Soviet Union did not carry much weight in international affairs in 1930-31 and that one half of one course was enough. But what about today? Have the courses grown as rapidly as the power and influence of the Soviet Union have grown?

In preparing this paper I made a very modest little survey of present courses in Soviet foreign relations. Since no plush foundation was financing my survey and I could not command the survices of a staff of secretaries and researchers, I made no attempt to canvass all of the accredited colleges and universities. Instead I sent questionnaires to only about 80 persons who were known to have interests in this field. Since the letters were sent out during the summer vacation, a rather high percentage of them were not answered. (I am generously assuming that those who did not comply with my request for five minutes of their time were out of town and hence did not get the questionnaire.)

Let me pause at this time to thank those who did answer the questionnaire and especially to thank the ones who sent copies of their course outlines, reading lists, assignment sheets, and so on. These mimeographed materials told me much more about a course than could be learned from a one-sheet questionnaire. I wish also to extend special recognition to Professor Jan Triska of Cornell, whose syllabus was by far the most elaborate and most interesting that I received. I have no way of judging how a particular course is actually taught, but his was the best "on paper."

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[1] Farrell Symons, Courses on International Affairs in American Colleges, 1930-31 (Boston: World Peace Foundation, 1931).

To get on with the results of my little survey: By one means or another I was able to discover only 33 courses on Soviet foreign relations currently being taught in American colleges. Of these, almost all are one semester or less in length. Many are only parts of courses, being combined with such subjects as Soviet government or the foreign policies of the great powers. As far as I know, only two universities (Wisconsin and Virginia) offer lecture courses longer than one semester on Soviet foreign relations. For further details see the attached list of courses.

I am sure that this list is not complete. (I hope that those of you who read this paper or who attend the session of the A. P. S. A. will help to make it more complete by sending me additional names or by filling out questionnaires at the meeting.) However, after making allowances for the incompleteness of the survey, I strongly suspect that the number of such courses now being taught is not yet commensurate with the importance of the subject. As far as I have been able to discover, such large and respected institutions as the University of Illinois, Princeton, Chicago, and C.C.N.Y. have no courses on Soviet foreign relations.

Why not? Though I did not ask this question in the survey, I believe that I know some of the reasons. In the first place, any new subject trying to establish a beachhead runs into opposition from inertia, vested interests, limited budgets, and limited staffs. Usually the curriculum is already crowded, and the staff fully employed with other courses.

Second, there are still comparatively few professors in our universities who ever took a course in this subject. This means that they often have to start from scratch in working up a course, since they do not have reading lists, syllabi, class notes, and accumulated knowledge obtained while in graduate school. Furthermore, professors already have other specialties which they are accustomed to teach, and it requires effort to get out of one's familiar and congenial rut.

This point and another one were made by Samuel Hendel, Chairman of the Department of Government at the City College of New York in a letter explaining why C.C.N.Y. has no course on Soviet foreign relations:

> I, and several of my colleagues, have thought of proposing a course on Soviet foreign policy. (Some months ago the initial formal step was taken.) Why was no formal proposal put forward earlier? It is hard to say. One reason may be the heavy teaching, administrative and other burdens of staff members who hesitate, therefore, to embark on difficult new undertakings. Another reason, I suspect, was the feeling in the period after 1946 on the part of many students--and this had its discouraging impact on the faculty--that the less interest shown in the USSR, the better for the students' careers.

In addition, there doubtless are some colleges which lack such courses not for any of the reasons previously stated, but simply because the responsible faculty members feel that other courses are more important for a general liberal education. They might argue that a course in Soviet foreign relations is more narrow and therefore less essential than basic, introductory courses in foreign affairs, history, sociology, psychology, and other disciplines. Some might contend that even in graduate departments of foreign affairs and political science a course on Soviet foreign relations should be given a low priority -- lower than such basic courses as international law, international organization, American foreign policy, and so on.

There is some logic to these arguments, particularly if the curriculum of the school involved really is limited to a core of basic, rationally selected

courses which every student ought to take. But too often, I fear, the college which has no room for Soviet foreign relations does have room for courses on 18th century English literature, the history of the French Revolution, archaeology, organic chemistry, calculus, and so on. I am not suggesting the abolition of any of these courses, nor do I wish to start a general discussion about the ideal college curriculum. All I am trying to say is that many colleges which do not offer courses on Soviet foreign relations do have courses that are probably less essential for a liberal education in today's world.

2. The Textbook Problem.

Another factor which probably discourages professors from going to the trouble of preparing a new course on Soviet foreign affairs is the paucity of suitable textbooks. This was the problem most commonly referred to in reply to my question: "What seem to you to be the major difficulties of teaching such a course?" None of the books currently available seem to me really adequate, and those that do exist become more out of date each year. Furthermore, publishers show little interest in putting out new textbooks in this field. I have talked with several editors, and all of them take the view that the market is too small to bother with. I understand that there are two histories of Soviet foreign relations presently available in manuscript form, but neither can find a publisher.

In this connection you may be interested to know, if you have not already heard, that Oxford University Press has just published a revised one-volume version of Readings in Russian Foreign Policy, edited by Goldwin, Stourzh and Zetterbaum, and formerly published by the American Foundation for Political Education.

Professor W. W. Kulski of Syracuse University informs me that he has prepared a new book entitled Peaceful Co-Existence, An Analysis of Soviet Foreign Policy, which is due to be published by Henry Regnery in November. This volume will be arranged analytically and topically rather than historically, with main emphasis on the period since 1939 and based chiefly on Soviet sources such as treaties and official statements.

Up until now, however, almost none of us seems to have found a single textbook, or pair of textbooks, which by themselves provide sufficiently broad coverage for the required reading in our courses. So we have had to compile rather long and complicated reading assignments which refer the students to many different journal articles and chapters in books. The most extensive such list that I have seen, prepared by Professor Triska of Cornell, is 18 pages long and contains no less than 120 different required readings from 63 journals and books, plus many more voluntary readings.

Making such a long list of readings easily available for the students is likely to create problems for the library. Librarians might object to placing so many bound volumes of their periodicals on reserve, and they may also be reluctant to purchase extra copies of a journal just for the sake of a single article.

One solution, of course, is to reproduce the journal articles in some form, and that is what Professor Triska has done. In his case the Cornell library Verifaxes the articles on his required reading list and has them available in the library for the students to use. Alexander Dallin at Columbia arranged to have fifteen selected articles duplicated and placed on sale to his students for one dollar. This year Professor Dallin is planning to enlarge his set of readings to about nineteen articles and make them available for sale to other universities as well as his own. They will probably be distributed through Columbia University Press and are expected to be ready some time during the fall semester.

If you choose to depend partly or entirely on periodicals for your assigned readings, there is the additional problem of keeping informed about what articles are published and revising your reading lists each year to keep them up to date. This is a problem that has annoyed me for years and I would be grateful to anyone who can provide an easy solution--easier than spending a whole day in the library each week perusing huge piles of journals. Professor Triska's assigned readings came from 34 different periodicals, and the voluntary readings from still more. Merely to keep informed about all the articles published that relate to Soviet foreign relations is in itself quite a task, aside from reading them. In addition to the standard journals like Foreign Affairs, World Politics, Problems of Communism, and so on, there sometimes are excellent articles in less obvious sources such as Partisan Review, California Monthly, Transactions of the Connecticut Academy of Arts and Sciences, American Journal of Orthopsychiatry, American Anthropologist, Flying, Ordnance, plus many others. In fact, Soviet foreign relations involves so many elements and commands such widespread interest that you are liable to find almost anyone expressing his opinion on the subject in almost any publication. Keeping "up to date" is quite a job.

This task was eased for a while by a State Department publication entitled Soviet Bibliography, which listed every two weeks the articles and books published in English on the Soviet Union.[2] Unfortunately, however, financial considerations forced the Department to suspend publication in 1953, and nothing has really taken its place. Several years ago I tried unsuccessfully to persuade the Joint Committee on Slavic Studies that an interdisciplinary bibliography on the Soviet Union ought to be published quarterly or annually, perhaps in the American Slavic and East European Review. Maybe someone here knows of a university, foundation, or government agency that could be interested in such a project. It seems to me that a general bibliography is especially needed in the Soviet field because most "Sovietologists" are not interested simply in their particular discipline of government, foreign affairs, history, geography, sociology, and so on, but are interested in the Soviet Union as a whole, regardless of the approach.

3. How the Courses are Organized.

Judging by the information sent me, the typical course on Soviet foreign affairs is organized as follows:

(a) One or two lectures summarizing Tsarist foreign policy.
(b) One or two lectures on Marxist-Leninist-Stalinist theory.
(c) A chronological history of Soviet foreign relations from 1917 to the death of Stalin or beyond.
(d) Current Soviet policy in particular areas--Eastern Europe, Western Europe, the Far East, the Middle East, etc.
(e) Discussion of recent issues--disarmament, the UN, Soviet economic warfar, the Berlin crisis, etc.
(f) American-Soviet relations today.

In addition to these rather standard topics, the course outlines that I have seen sometimes include such items as the following:

(a) The world Communist movement--the Comintern, Cominform, etc.

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[2] Published by the Department of State, Division of Library and Reference Services, from June 8, 1949, through June 17, 1953. It indexed about 50 periodicals.

(b) Soviet capabilities--economic, military, scientific and technological, natural resources, population, etc.
(c) Soviet negotiating techniques.
(d) National Communism.
(e) The formulation, administration, and execution of Soviet foreign policy--the Presidium, the Ministry of Foreign Affairs, the diplomatic service.
(f) Soviet views on international law.

It appears to me that most of the courses (including my own) have been too traditional in their approach. We have taught them largely from the point of view of the particular discipline in which we were trained--usually either government or history--and insufficient attention has been paid to what other disciplines may have to offer. In fact, we usually fail even to point out to our students that other ways of analyzing Soviet foreign relations exist. What other topics should be added to our courses?

4. Geographic Factors.

First of all, there is geography. I was surprised at how few of the courses include a lecture on the influence of Russia's geography on her foreign relations. This is particularly surprising in view of the fact that geography is a relatively stable element in the picture, which persists through the centuries while political systems and leaders come and go. Here I have in mind such things as the thousand-year quest for control of the Turkish Straits, a goal that has not been abandoned, though the Straits may be less important today than they were in the past. Another example would be the absence of a good natural frontier between Russia and Poland and the effect that this has had on the stormy relations between these two countries.

Under the heading of geography might also come a discussion of Mackinder's geopolitical ideas, the Eurasian thesis of Vernadsky and others, and Kerner's theory of "the urge to the sea." Does the possessor of the "heartland" have unique advantages today? How important is it that the Soviet Union occupies all of northern Asia? Is the search for warm-water ports really a valid explanation of Russian expansion? These are questions that any course on Soviet foreign relations ought to discuss, even if briefly.

5. Historical Factors.

Second, there are historical factors. Most of the professors I know about are using the historical approach to a considerable extent, especially for the period from 1917 to 1945. Columbia and Wisconsin have separate courses on the history of Russian foreign relations before 1917. Many of the courses, however, seem to start with 1917 or later, and say nothing at all about the pre-revolutionary period. The reason, no doubt, is insufficient time in the usual one-semester course. Even so, it seems to me that an absolute minimum should be one lecture outlining the main trends of tsarist foreign policy, with emphasis on the many elements of continuity in aims and methods.

In addition, the student should be told that some scholars go so far as to argue that Soviet policy is "merely a continuation of the foreign policy pursued by the Czarist regime."[3] Since this point of view is repeatedly voiced in the press, it should be taken up in class, possibly in connection with a discussion of the importance or unimportance of Marxist ideology in determining Soviet foreign policy.

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[3] Pitirim Sorokin, Russia and the United States (New York: 1944), p. 196. Quoted in William A. Glaser, "Theories of Soviet Foreign Policy," World Affairs Quarterly (July, 1956), p. 132.

Are we competing with Great Russian imperialism, with Communist world revolution, or a combination of the two? Is the Soviet system Communism or Russianism? In this debate, which seems never to end, those nationalities who have been victims of Russian aggression (such as Poles and Ukrainians) tend to emphasize the factor of continuity, saying in effect that the Russians have always been imperialistic scoundrels and always will be. Partisans of the opposite view, especially those of Russian origin, argue that tsarist imperialism was no worse than other imperialisms and that Russia wouldn't be a threat to the world today if it were not for those horrible Communists.[4] Regardless of which side (or which middle) we may wish to take in this argument, we cannot simply ignore it in our classes.

6. Ethnic Factors.

Of the course outlines that I examined, none listed "ethnic factors in Soviet foreign relations" as a lecture topic, although a few did include one aspect of this question--pan-slavism.

Shouldn't our students be told such elementary facts as that half of the Soviet population is non-Russian, that the USSR in many respects is a colonial empire of subject peoples, lorded over by a dominant nationality? Shouldn't they be aware of the existence of nationalism and resentment against Russian rule among the minority nationalities, the importance of which was demonstrated in World War II when Kalmucks, Crimean Tartars, Balts, and others co-operated with the invader? Estimates of Soviet capabilities usually overlook this element of weakness.

The ethnic composition of the Soviet population has relevance to foreign relations in other ways also. For example, the existence within Soviet border areas of nationalities similar to or identical with those across the frontier has facilitated Soviet expansion in two ways. First of all, claims have been put forward to territories outside of the Soviet Union that are inhabited by peoples related to those inside. This has been done with the Karelians, Byelorussians, Ukrainians, Moldavians, and Azerbaizhanis. Secondly, when the Soviets moved into border areas, they used their own border nationalities as agents and administrators and probably also as intelligence agents. For example, Soviet Mongols were used in helping to establish the Communist regime in Outer Mongolia. Similarly, when the USSR annexed western Ukraine, the absorption was facilitated by the fact that Communist officials could be brought in from the eastern Ukraine. A traveler in Galicia and Trans-Carpathian Ruthenia today get the impression that most of the administrators in these areas were imported from parts of the Ukraine long under Soviet rule. The same pattern no doubt exists in Byelo-Russia, the Baltic States, and Moldavia.

There are still other reasons for devoting a lecture to ethnic factors in Soviet foreign relations. It could be pointed out that since so many of the Soviet nationalities are Asiatic, it is easier for the Soviet Union to appeal to Asian countries as "brothers," whereas Americans appear incurably occidental.

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[4] For examples of this controversy see the articles by O. Halecki in the February issue and by N. V. Riasanovsky in the October issue of the 1952 volume of American Slavic and East European Review. For a related debate over whether or not Marxist ideology influences Soviet foreign policy, see the articles by Samuel L. Sharpe, Carew Hunt, J. L. H. Keep, and Richard Loewenthal in Problems of Communism (March-April, 1958), and the rebuttals in the two following issues. See also the articles by Harry Rudin and David Dallin in the Spring 1953 issue of Yale Review.

One lecture, however, doesn't finish this subject. It seems to me that in our discussion of the early history of Soviet foreign relations we ought to spend another class meeting on the fight of the border nationalities for independence from Russia during the years from 1917 to 1924. Too many of our textbooks and courses, I fear, almost ignore the struggles for freedom of the Finns, Balts, Ukrainians, Georgians, Armenians, Azerbaizhanis, and Central Asian peoples. These episodes cannot be dismissed as "internal affairs" if for no other reason than that several of these nations did achieve independence, some temporarily and others for the whole inter-war period. Not only is this story an important part of early Soviet foreign relations, but it also casts considerable light on the ruthlessness and unscrupulousness of Stalin and other Soviet leaders, as well as on Soviet techniques of expansion.[5]

In connection with the lecture on ethnic factors, one might also mention the use of religious appeals in Soviet foreign policy. Here I have in mind not only the employment of the Orthodox Church in the Balkans, but also the efforts to create brotherly feeling between Soviet and Middle Eastern Moslems.

7. The Factor of National Character.

Next we come to the factor of national character. Most of us, myself included, have tended to skip this subject, even though we all know that nationalities are different and that this does influence international relations.

Why have we ignored national character or national patterns of behavior? One reason is the difficulty or impossibility of obtaining accurate, scientific knowledge on this subject. How can one characterize with any exactness a population as numerous, diverse, and dynamic as that of the Soviet Union? Usually the only persons willing to speak in terms of Russian national character are those who deal in cliches such as "the Slavic soul" or in tired proverbs like "scratch a Russian and you'll find a Tartar."

Recent attempts by anthropologists to examine Russian national character in a scientific manner resulted in disaster as far as the academic community was concerned. I refer, of course, to Geoffrey Gorer and his famous swaddling thesis. It seems unfortunate that his theory was ever put forward, as it has tended to discredit any anthropological approach to the study of Russia. Though I am among those who remain unconvinced by the diaperologists, I still feel that the ideas of Gorer, Mead, Rickman, Benedict and company are worth mentioning to our students, not only to get a laugh, but to show them that just as there are "different roads to socialism," so there are "different roads" to knowledge of the Soviet Union.[6]

Although it is difficult to describe Russian national character, we cannot pretend it doesn't exist. At the very least we should rid our students of the

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[5] A large part of the story is told by Richard Pipes in The Formation of the Soviet Union (Cambridge: Harvard University Press, 1954).

[6] For a perceptive discussion of the psycho-cultural approach to the study of the Soviet Union, see the review article by Raymond A. Bauer in World Politics (October 1954), pp. 119-132.

optimistic notion that Russians are really no different from Americans, and that if only the Russian people and the American people could somehow get together and talk things over, most of our disputes would disappear.

8. The Character of Soviet Leaders.

In an age when the "great man" theory of history is out of style and scholars speak instead of "economic factors," "class structure," and "social forces," some of us may fall into the habit of neglecting the impact that individuals have on Soviet foreign policy. But if it is worth while to know something about the national character of the Russian people as a whole, surely it is doubly valuable to know something about the character of their leaders.

Some investigators have attempted to apply Freudian techniques to Lenin and Stalin. Nathan Leites in his Study of Bolshevism has tried nothing less than long-distance "psychoanalysis" of Lenin, not by studying his childhood, family life, or behavior, but by minutely examining his writings. By this process Leites believes that he has found a peculiar Bolshevik personality type with certain fixed attitudes toward the world. Lenin was the prototype, and through his will he molded the Party in his image, attracting to membership people with similar personalities and purging those who did not fit the pattern. Thus a self-perpetuating Leninist Party containing a certain type of person and embodying a particular outlook toward the world has presumably been conducting Soviet foreign relations ever since 1917.[7]

Psychological methods have also been used by Charles Prince in analyzing Stalin,[8] but as far as I know it has not yet been attempted seriously with Khrushchev, though we are all constantly attempting in an amateurish sort of way to figure out "what kind of guy Khrushchev is."

It seems doubtful that many of us here know enough about psychology or psychological methods to properly evaluate their use in analyzing Russian national character, Bolshevik character, or the personality of Soviet leaders. I for one am inclined to think that those who attempt such long-distance "psychoanalyzing" generally start out with preconceived notions as to what the Russian people (or Lenin or Stalin) are like and then produce evidence or pseudo-evidence to support their previously formed conclusions. But I frankly admit my lack of competence in the psychological field and maintain that in any case these exotic approaches to Soviet foreign relations should have some small place in our courses. Remember that in the "brain storming" sessions which supposedly produce brilliant new ideas in the minds of business executives and military officers, the basic rule is that no idea is too crazy to be worth discussing.

9. Kremlinology.

Another method of analyzing and predicting Soviet foreign policy is what Dan Bell has labeled "Kremlinology." This is the fascinating game of deciding who outranks whom by studying the order in which the names of Kremlin leaders are listed in

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[7] See Nathan Leites, A Study of Bolshevism (Glencoe, Illinois: Free Press, 1954) and The Operational Code of the Politburo (New York: McGraw-Hill, 1951). The ideas of Leites are sympathetically discussed by Daniel Bell in "Ten Theories in Search of Reality," World Politics (April 1958), pp. 327-365.

[8] "A Psychological Study of Stalin," The Journal of Social Psychology (November 1945).

Pravda, and figuring out who is on his way up, and who is on his way down. Having decided at the start that the Presidium is split by competing factions, the practitioners of this popular shell game then decide who belong to which faction, and finally determine which faction supports or opposes a particular foreign policy. Usually, of course, these factions are divided into the "hards" and the "softs," though the justification for so designating them usually remains somewhat mysterious.

The Kremlinologists often do give us clues regarding the struggle for power in Russia, but they are seldom of much assistance in predicting or understanding Soviet foreign policy. I believe we would have to go back to 1939 to find a good clear case where a shuffle in the foreign ministry coincided with a change in foreign policy. Analysts at the time should have suspected that the replacement of Litvinov with Molotiv meant that the policy of collective security against Hitler was being reconsidered, but I'm not sure that many did so. Generally speaking, our knowledge of differences of opinion within the Presidium is so minute that Kremlinology rarely tells us what to expect in foreign policy. We may occasionally obtain bits of information of this nature from the Poles (or formerly from the Yugoslavs), but the picture still remains a jigsaw puzzle in which most of the pieces are missing.

10. Content Analysis.

One of the tools regularly used by the Kremlinologists, "psycho"-analysts, and others, is content analysis. This method has been particularly conspicuous in the publications of the Rand Corporation, which all of you are familiar with. Though the practitioners of content analysis have been somewhat derisively referred to as a branch of the "Society-of-Searchers-for-Needles-in-Haystacks,"[9] they do sometimes find needles and very interesting ones. By patiently sifting every statement in the Soviet press on a particular subject, the content analyst often helps to at least define the boundaries of our ignorance.[10] The chief difficulty with this method, it seems to me, is that those of us who are not employed by the government seldom have enough time or enough Soviet publications to indulge in it to any great extent. But again, it is a technique our students should know about.

11. The World Communist Movement.

One of the problems that complicates the teaching of Soviet foreign relations is the fact that the Soviet rulers have always conducted their policy on two levels--the official level represented by the Sovnarkom, and the unofficial level represented by the Comintern. To ignore the latter and teach a course in purely diplomatic affairs would be to skip half of the story, possibly the more important half. Yet any attempt to deal with the world Communist movement is liable to get one involved in the enormously complex history of the different Communist parties and the countries where they operate.

What to do? At Michigan State, Alfred Meyer teaches a course on World Communism instead of one on Soviet foreign relations. As far as I know, this is the only course devoted entirely to this subject up til now, although Alexander Dallin is starting one at Columbia this fall. Two courses on World Communism in the entire United States are not enough, it seems to me. Perhaps some of us can try teaching this subject every other year, alternating it with our traditional course on Soviet foreign relations.

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[9] Hanson W. Baldwin in reviewing H. S. Dinerstein's War and the Soviet Union.

[10] A good recent example of Kremlinology and content analysis is the book by Myron Rush, The Rise of Khrushchev (Washington: Public Affairs Press, 1958).

Most of us, however, will probably not be able to teach World Communism except as a part of a one-semester course on Soviet foreign relations. Even in such a short amount of time there should be some place for discussion of such things as the early attempts of the Comintern to foment revolution, the Popular Front, the Cominform, and so on. That is, the World Communist movement must be woven in with Soviet diplomatic relations. Furthermore, some attention should be paid to Communist strategy and tactics.

12. Communist Strategy and Tactics.

It was surprising to learn how few of the courses include lectures on Communist or Soviet strategy and tactics. Surely we should discuss such topics as the following:

(a) The general pattern of Soviet strategy and tactics.
(b) How Communist parties are organized and how they operate.
(c) Communist "front" organizations and how they are used.
(d) Communist propaganda techniques.
(e) The appeals of Communism.
(f) Communist methods of seizing power.
(g) How Communist diplomacy differs from traditional diplomacy. How Communists negotiate.
(h) Communist methods of rule in the satellite states.

13. Capabilities.

Another approach--one that has been popularized by Harold Sprout--focuses attention on capabilities. Whether we use that particular word or not, most of us probably make some attempt to compare present Soviet and American strengths and weaknesses, though we may not do a very thorough job of it. It seems to me that any course on Soviet foreign relations ought to have a section labeled "Soviet Capabilities," "Soviet Strengths and Weaknesses," "The US and USSR Today," or something of the sort. In this section there should be discussion of subjects like the following:

(a) Economic Factors--natural resources, food supply, economic institutions and organization, present production of crucial items, comparative rates of economic growth between the US and USSR.
(b) Demographic Factors--the quantity and quality of Soviet manpower, comparative rates of population growth, comparative educational levels.
(c) Military Factors--comparative military strength.
(d) Scientific and Technological Factors--the race for scientific and technological supremacy.
(e) Political Factors--Which system, the Soviet or American, is more efficient for the formulation and administration of foreign policy?
(f) Social Factors--What strengths and weaknesses are produced by the social system? What influence might changes in the social structure have on Soviet foreign policies?

During the first few years after World War II such subjects didn't seem so urgent. But today, with the Soviet Union apparently ahead in ICBM's and with their industrial production continuing to grow more rapidly than ours, to ignore such problems in our courses is hardly realistic.

14. The Problem of Time.

Some of you no doubt are saying to yourselves: "It is all very well to talk about adding all of these new approaches and topics to my course on Soviet foreign

relations, but how am I going to find the time in a one-semester course that is already overcrowded?"

Obviously you cannot devote a full lecture to each of the topics I have mentioned. You may not want to spend much time on some of the newer, more exotic approaches. But you can at least make your students aware of the fact that there are many different approaches to the study of the Soviet Union and that no one discipline can provide all the answers. Surely a jigger of diplomatic history mixed with a jigger of current problems is not the most stimulating academic cocktail that we can concoct in this day of increasing interdisciplinary co-operation and cross-fertilization.

If you haven't time to discuss these other approaches in class, you can require your students to read something about them. There are at least three essays available on the subject of different approaches to the study of the Soviet Union--by John Reshetar, Dan Bell, and William Glaser.[11] Even better would be to have your class read articles or chapters by the original writers themselves--Gorer, Leites, Prince, Sharp, Toynbee, and so on.

If you still insist that it is impossible to discuss all these topics in one semester, please look at the appended Outline of Lectures which includes every one of them. This is the way I would organize such a class, though each of you would probably do it differently. In any event, the outline may be of use to someone starting a new course, and I trust it will also serve to provoke profound and scintillating discussion.

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[11] John S. Reshetar, Problems of Analyzing and Predicting Soviet Behavior (Garden City: Doubleday, 1955); Daniel Bell, "Ten Theories in Search of Reality," World Politics (April 1958), pp. 327-365, and William A. Glaser, "Theories of Soviet Foreign Relations," World Affairs Quarterly (July 1956), pp. 128-152.

APPENDIX A

OUTLINE OF LECTURES

For a one-semester course on Soviet Foreign Relations
(3 hours a week for 15 weeks = 45 class meetings)

PART I. VARIOUS APPROACHES TO SOVIET FOREIGN RELATIONS

1. GEOGRAPHIC INFLUENCES ON SOVIET FOREIGN RELATIONS.

   a. Russian objectives, advantages, and disadvantages which result from its geographical position, regardless of what form of government it may have.
   b. Geopolitics - the Heartland theory (Mackinder).
   c. The "Urge to the Sea" theory (Kerner).
   d. The Eurasian theory (Vernadsky).
   e. The quest for defensible frontiers.

2. ETHNIC FACTORS IN SOVIET FOREIGN RELATIONS.

   a. Pan-Slavism, past and present.
   b. The use of border nationalities (Azerbaizhanis, Finns, Mongols, etc.) for expansion.
   c. The use by the Soviet regime of Asiatic nationalities in Asian countries and Moslems in Moslem countries.
   d. Resentment of Russian domination among minority nationalities (Baltic peoples, Georgians, Moslems, etc.)

3. HISTORICAL INFLUENCES ON SOVIET FOREIGN RELATIONS.

   a. Is Soviet foreign policy simply a continuation of tsarist policy?
   b. Russian messianism, past and present.
   c. "Russia's Byzantine heritage" (Toynbee).

4. IDEOLOGICAL INFLUENCES ON SOVIET FOREIGN RELATIONS.

   a. Marxism-Leninism-Stalinism.
   b. Are the Soviet leaders influenced by their professed ideology, or do they simply use it as a tool?
   c. Are we competing with Great Russian Imperialism or Communist World Revolution?

5. RUSSIAN NATIONAL CHARACTER.

   a. Why they behave like Russians. Are they "Asiatics"? Are they "Byzantines"?
   b. The swaddling theory (Gorer).
   c. Psychoanalysis by long distance (Nathan Leites, Charles Prince, etc.)

6. OTHER METHODS OF ANALYZING SOVIET POLICY.

   a. Kremlinology - the struggle for power among the top leaders and factions.
   b. Content analysis.
   c. Communist semantics.
   d. The "reaction" and "fear" theses.

PART II. A HISTORY OF SOVIET FOREIGN RELATIONS

7. THE MAIN FEATURES OF TSARIST FOREIGN POLICY.

8. FIRST ACTS OF THE SOVIET REGIME IN FOREIGN AFFAIRS.

   a. The role of foreign affairs in the collapse of the Tsarist and Provisional Governments.
   b. Bolshevik expectations of world revolution.
   c. Brest-Litovsk.

9. CIVIL WAR AND INTERVENTION.

10. THE CONQUEST OF THE BORDERLANDS: "NATIONAL SELF-DETERMINATION" AS PRACTICED BY THE BOLSHEVIKS.

    a. Bolshevik attempts to prevent the independence of Finland and the Baltic states.
    b. The attempt to export revolution to Poland.
    c. Ukraine's fight for independence.
    d. The Caucasus.
    e. Central Asia.

11. WORLD REVOLUTION AND THE COMINTERN.

12. N.E.P. AND THE TRUCE WITH THE CAPITALIST WORLD. RECOGNITION. "SOCIALISM IN A SINGLE COUNTRY".

13. RUSSIA AND THE CHINESE REVOLUTION, 1918-27.

14. RUSSIA IN THE FAR EAST, 1928-1939.

15. U.S. RECOGNITION OF THE SOVIET REGIME.

16. THE RISE OF HITLER AND THE SEARCH FOR COLLECTIVE SECURITY. THE POPULAR FRONT.

17. COLLECTIVE SECURITY FAILS -- ETHIOPIA, SPAIN, AUSTRIA, CZECHOSLOVAKIA.

18. THE NAZI-SOVIET PACT. POLAND, THE BALTIC STATES, AND FINLAND. STALIN AND HITLER COOPERATE AND QUARREL.

19. WORLD WAR II -- THE "GRAND ALLIANCE".

20. YALTA AND ITS AFTERMATH. THE SOVIET OCCUPATION OF EASTERN EUROPE.

21. POTSDAM AND AFTER.

22. THE COLD WAR UNDER STALIN.

23. THE "NEW LOOK" -- STALIN'S SUCCESSORS AND THEIR TACTICS.

PART III. COMMUNIST STRATEGY AND TACTICS

24. THE GENERAL PATTERN OF COMMUNIST STRATEGY AND TACTICS.

25. HOW COMMUNIST PARTIES ARE ORGANIZED AND HOW THEY OPERATE.

26. COMMUNIST "FRONT" ORGANIZATIONS -- LOCAL, NATIONAL, AND INTERNATIONAL.

27. THE APPEALS OF COMMUNISM.

28. COMMUNIST PROPAGANDA THEMES AND TECHNIQUES.

29. COMMUNIST METHODS OF SEIZING POWER.

30. COMMUNIST TACTICS IN DIPLOMACY. HOW COMMUNISTS NEGOTIATE.

31. COMMUNIST TACTICS IN THE U.N.

32. COMMUNIST BLOC USE OF TRADE, AID AND TECHNICAL ASSISTANCE.

PART IV. COMMUNIST STRATEGY AND TACTICS IN SPECIFIC AREAS

33. EASTERN EUROPE. RUSSIA AND ITS SATELLITES.

34. NATIONAL COMMUNISM IN YUGOSLAVIA, POLAND, HUNGARY AND ELSEWHERE.

35. WESTERN EUROPE.

36. ASIA. THE MOSCOW-PEKING AXIS.

37. THE MIDDLE EAST.

38. AFRICA.

39. LATIN AMERICA

PART V. THE US AND USSR TODAY

40. THE ECONOMIC RACE.

41. THE MILITARY RACE.

42. THE SCIENTIFIC AND TECHNOLOGICAL RACE.

43. WHICH SYSTEM IS MORE EFFICIENT IN THE FORMULATION AND ADMINISTRATION OF FOREIGN POLICY?

    a. The executive and decision making.
    b. The diplomatic service. Intelligence agencies.

44. COEXISTENCE, COEXTERMINATION, OR WORLD COMMUNISM?

COURSES ON SOVIET FOREIGN RELATIONS AND WORLD COMMUNISM, 1959-60

(Courses devoting less than 30% of their time to these subjects have not been included.)

NOTE: If you find any errors in this list, or if you know of any other courses on Soviet foreign relations or world Communism, please send a note to Professor Thomas Hammond, History Department, Bascom Hall, University of Wisconsin, Madison, Wisconsin.

College or Univ.	Instructor	Subject of Course	Period Covered	% of Course on Soviet For.Rels. or W.Com.	Length of Course	Approx. No. of Students
American	Sharp	Soviet for. rels.	1917-59	100%	1 sem.	28
Barnard	Emerson	Soviet for. rels.	1945-59	100%	1 sem.	25
Brown	Goodman	World Communism, Soviet for. rels.	1917-59	100%	1 sem.	25
Cal.(Berk.)	Towster	Soviet for. rels.	(Questionnaire not answered)			
U.C.L.A.	Cattell	Soviet for. rels.	1917-59	100%	1 sem.	160
Claremont	Neal	Seminar on Sov.f.r.	1917-59	100%	1 sem.	10
Columbia	Dallin	Soviet for. rels.	1917-59	100%	1 sem.	100
	Dallin	Russian for. rels.	800-1917	100%	1 sem.	100
	Dallin	World Communism	1917-59	100%	1 sem.	(new)
	Dallin	Seminar on Sov.f.r.	1917-59	100%		
	(several)	Seminar on Rus. & China				
Univ. of Conn.	Beck	Soviet for. rels.	1917-59	100%	1 sem.	18
Cornell	Triska	Soviet for. rels.	1917-59	100%	1 sem.	150
De Paul	Jados	Soviet govt., economy & for. rels.	1917-59	35%	1 sem.	25
Denver	Korbel	Soviet for. rels.	1917-59	100%	1 qtr.	15
Dartmouth	Adams	Imperial & Soviet for. rels.	1700-1959	50%	1 qtr.	40
Harvard	Shulman	Soviet for. rels.	1300-1959	90%	1 sem.	35
Indiana	Tucker	Soviet for. rels.	1917-59	100%	1 sem.	(new)
Iowa State	Van Dyke	Soviet for. rels.	1917-59	98%	1 sem.	35

College or Univ.	Instructor	Subject of Course	Period Covered	% of Course on Soviet For.Rels. or W.Com.	Length of Course	Approx. No. of Students
Univ. of Kansas	Laird	Soviet for. rels., Soviet economy	1917-59	33%	1 sem.	30
Michigan	Ballis	For. rels. of the Soviet bloc	1917-59	90%	1 sem.	60
Mich.State	Meyer	World Communism	1917-59	100%	1 qtr.	38
N.Y.U.	Raymond	Soviet for. rels.	1917-59	100%	1 sem.	60
Notre Dame	Brinkley	Russian & Soviet for. rels.	1800-59	75%	1 sem.	5
Oberlin	Lanyi	Soviet govt. & politics	1917-59	30%	1 sem.	40
	Lanyi	Seminar on Soviet for. rels.		100%	1 sem.	12
Ohio State	Nemzer	Soviet for. rels.	(Questionnaire not answered)			
Oregon	Blumenthal	Soviet for. policy			1 qtr.	(new)
Univ. of Penn.	Rubinstein	Soviet for. rels.	1917-59	100%	1 sem.	18
Pomona	Neal	For. rels. of USSR and E. Europe				
San Francisco	Fisher	Com. for. policies (sem.)	1903-59		1 sem.	11
Syracuse	Kulski	World politics, Soviet for. rels.	1917-59	50%	1 sem.	95
Tufts (Fletcher)	Nowak	Rus. Diplomatic Hist.	1800-1959	30%	2 sem.	10
Virginia	Zyzniewski	Russian & Soviet for. rels., E. Europe	1700-1959	75%	2 sem.	10
Washington	Reshetar	Soviet for. rels.	1917-59	100%	1 qtr.	43
Williams	Schuman	Soviet for. rels. govt. & politics	862-1959	30%	1 sem.	25

College or Univ.	Instructor	Subject of Course	Period Covered	% of Course on Soviet For. Rels. or W.Com.	Length of Course	Approx. No. of Students
Wisconsin	Armstrong	Soviet for. rels.	1939-59	100%	1 sem.	50
	Hammond	Russian & Soviet for. rels.	800-1939	50%	2 sem.	(new)
	Hammond	Seminar on Russian History & for. rels.	1700-1959	50%	2 sem.	(new)
Yale	Barghoorn	Soviet for. rels.	1917-59	100%	1 sem.	
	Barghoorn	Seminar on Soviet for. rels.	1917-59	100%	1 sem.	(new)

TOTALS:	No. of Colleges	No. of Courses	No. of Students
	33	41	1273

THE LEGISLATIVE VETO OF EXECUTIVE ACTIONS

By Joseph P. Harris
University of California

Prepared for delivery at the 1959 Annual Meeting of The American Political Science Association, Washington, D. C., Mayflower Hotel, September 10-12, 1959

Since 1932 Congress has developed a new form of legislative control of executive officers and departments commonly known as the legislative veto. The distinguishing characteristics of this legislation are: (1) specified executive decisions or actions are required to be submitted to Congress before going into effect; (2) a waiting or laying period is provided in order that Congress may consider and pass upon such actions; (3) Congress reserves the right during the laying period to disapprove or veto proposed actions, but not to amend them; and (4) the action of Congress disapproving a proposed executive action is taken in a form which does not permit the President to exercise a veto. The legislative veto has usually been included in broad or unusual delegations of authority to executive officers, often to take actions formerly reserved for legislation. The device has enabled Congress to delegate authority to executive officers to cope with problems not suitable for legislative determination, reserving the power to pass upon executive decisions before they go into effect. Its effect is to enhance the power of executive officers in these areas, but at the same time to subject them to greater control by the legislative body.

The first statute providing for the legislative veto which was accepted by the President and became the precedent for subsequent legislation of this type, was the Executive Reorganization Act of 1939. It authorized the President to submit reorganization plans to Congress, which if not set aside by concurrent resolution within sixty days, became effective. This form of congressional action was chosen deliberately; by well accepted practice, concurrent resolutions are not submitted to the President for his signature. Congress, in effect, reserved the right to veto the President's reorganization plans by a majority vote of the two houses, avoiding the possibility of a presidential veto which would have required a two-thirds vote of each house to set aside his proposed reorganization plans.

This use of the concurrent resolution was new; prior to 1939 it had been used only for the internal affairs of Congress and for expressions of opinion having no legal effect, and it was assumed that other use was not sanctioned by the Constitution. After the precedent of the legislative veto by resolution was established, it was quickly extended to other subjects, and within a few years legislation was passed providing for the legislative veto by a simple resolution adopted by either house. Beginning in 1944, Congress has passed a number of acts delegating a veto to individual committees of the two houses, without requiring a resolution by either house to disapprove a proposed executive action; in one case the veto was granted to the chairman of a committee. The committee veto is, of course, quite different from the veto by one or both houses, and has far-reaching implications for legislative-executive relations. This form of the legislative veto, which has tended in recent years to supersede the earlier form of veto by resolution, is discussed in the second part of this chapter.

The legislative veto provides a new and highly significant form of control by Congress and its committees over executive actions. Formerly it had been universally held that Congress and its committees could not participate in the execution of the laws, which under the Constitution is assigned to the executive branch. For the first 140 years it was assumed that Congress could take legal action only in the manner prescribed by the Constitution, through passing laws or joint resolutions

which were submitted to the President for his approval. The legislative veto has changed the historic concept of the division of powers between the legislative and executive branches. If its usage becomes widespread, it may bring about a fundamental revision of our constitutional system. In a notable article written in 1941, Professors John Millett and Lindsay Rogers foresaw that the precedent of the legislative veto provided by the Executive Reorganization Act of 1939 would be extended into other areas, and expressed the opinion that it might produce a "nicer balance" between the legislature and the executive by facilitating delegations of needed authority to executive officers, provided the President's position were strengthened.[1] The subsequent developments in the use of the legislative veto, however, as will be seen, have strengthened the position of Congress and its committees and have weakened that of the President.

After the precedent of a legislative veto was established in 1939 with respect to executive reorganizations by the President, it was soon extended to other executive actions. Within a year Congress adopted the same procedure in authorizing the Attorney General to suspend the deportation of aliens, and in 1941 a provision was included in the Lend-Lease Act specifying that Congress could suspend its operation after two years by concurrent resolution. This was the first hime in history that a statute authorized Congress to terminate legislation in this manner.[2] Since 1939 more than twenty important statutes have included provisions for the legislative veto. Among those which have provided for a legislative veto by concurrent or simple resolution are the following: the Executive Reorganization Act of 1939 and subsequent years; the Alien Registration and Deportation Act of 1940 and subsequent amendments; the Lend-Lease Act of 1940 and numerous other wartime measures, which provided for termination by concurrent resolution; several mutual security and foreign aid acts; the Rubber Plants Disposal Act of 1953; the Atomic Energy Act of 1954, as amended; the National Defense Act of 1958; and the Trade Agreements Act of 1958. Numerous other statutes, starting with the Naval Construction Authorization Act of 1944, have authorized individual committees of Congress to exercise a veto over proposed executive actions, which are required to be reported to them in advance. Other examples of this form of legislative veto include the Military Construction Authorization Acts since 1951; the Lease-Purchase Act of 1952 and similar acts of later years; the Watershed Protection Act of 1954; the Defense Appropriation Act for fiscal year 1956 (with respect to discontinuance of business enterprises conducted by the armed services); and the Small Reclamations Projects Act of 1956. In addition, in recent years Congress has increasingly required advance reports of certain executive actions, the effect of which is not dissimilar to the legislative veto. Executive officers will rarely carry out

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1. "The Legislative Veto and the Reorganization Act of 1939", Public Administration Review, Vol. I (1941), pp. 176-189. See also: Cornelius P. Cotter and J. Malcolm Smith, "Administrative Accountability to Congress: The Concurrent Resolution", The Western Political Quarterly, Vol. IX (1956), pp. 955-966; Howard White, "The Concurrent Resolution in Congress", American Political Science Review, Vol. 35 (1941), pp. 886-889; Joseph Cooper, "The Legislative Veto: Its Promise and Its Peril", published in Public Policy, Yearbook of the Graduate School of Public Administration, Vol. 7, pp. 128-174 and Peter Schauffler, "The Legislative Veto Revisited", Ibid., Vol. 8 (1958), pp. 296-327. The author has also drawn upon the doctoral dissertations of William E. Rhode, Congressional Review of Administrative Decision Making by Committee Clearance and Resolution, (Michigan State University, 1958); and Peter Page Schauffler, A Study of the Legislative Veto, (Harvard University, 1956).

2. See Robert W. Ginnane, "The Control of Federal Administration by Congressional Resolution and Committees", Harvard Law Review, Vol. 66, pp. 569-611.

a proposed decision that has been objected to by a committee of Congress which passes on its legislative program. Congress has also discovered new uses of concurrent resolutions, other than the legislative veto, which increase its control over administration. The leading acts of this kind are discussed below.

The President has accepted bills which provide for a legislative veto by concurrent resolution, but has reluctantly signed bills which provide for the veto by one house. Presidents Truman and Eisenhower have vetoed several bills which provided for a committee veto, but have signed such bills when the need for the legislation was pressing. The legislative veto by resolution and the committee veto have been debated in Congress on several occasions. Both forms of veto have been defended because they increase the control of Congress and its committees over the executive branch, but have also been attacked, especially the committee veto, as an unconstitutional encroachment on executive functions. In two instances the committee veto was opposed by members on the ground that it would delay and obstruct the administration of the program.

The legislative veto has facilitated delegations of authority to executive officers to cope with problems that cannot be dealt with as effectively by ordinary legislation. Without a veto over his reorganization plans, Congress would have been unwilling to delegate authority to the President in peacetime to reorganize the executive departments and agencies. In some instances Congress has used the legislative veto as an alternative to enacting detailed statutes, reserving the right to review and pass upon broad grants of authority to executive officers.

It needs to be pointed out that Congress has always possessed the power to set aside or to reverse executive plans and decisions, but until the emergence of the legislative veto, it did so through the normal legislative processes and in the manner sanctioned by the Constitution. By the exercise of its legislative power in passing laws Congress has always been able to nullify or to revise executive decisions, and by its control of the purse, it has been able to approve or reject executive plans and to attach conditions which control executive actions. The significance of the legislative veto by resolution or by committee action is that it requires proposed executive actions to be laid before Congress in advance, which was not always required earlier, and it empowers Congress to disapprove the proposed action in a manner which avoids the possibility of a presidential veto. The committee veto requires the departments to consult with the committees prior to taking certain actions, and to secure the concurrence of the committees of both houses. Executive consultation with congressional committees is nothing new, but heretofore it has been conducted on an informal basis and without legal sanction. The change is important, for it strengthens the hands of the committees and enables them to participate to a larger extent in executive decisions.

1. The Legislative Veto by Resolution

1. Executive Reorganization. Throughout the history of the country executive departments and independent agencies have almost invariably been created by statute. Bureaus and other subordinate units within the departments and agencies, however, are usually created by executive action, but occassionally these too have been established by statute. The decisions concerning the major structure of executive departments and agencies, their authority, functions, principal officers, and their relations to the President, other departments, and to Congress, usually have important policy implications. For these reasons, the determination of the major features of the executive organization has always been regarded, especially by members of Congress, as a legislative function which it should not delegate, or delegate only with careful restrictions and standards. Congress has jealously

guarded its ultimate control over the structure of the executive organization, and, except in periods of war or great national emergency, has rarely delegated power to the President to create executive agencies. It does not look with favor on agencies which have not been established by statute.

With the great expansion of the national government during the last forty years, and the growth of the number, size and complexity of the executive departments and agencies, Congress has found itself unable to cope effectively and promptly with the problem of needed reorganizations. The task has become too complex for a legislative body, which is necessarily uninformed on many administrative problems and considerations which need to be taken into account. Moreover, unless executive officers are granted a reasonable discretion in the determination of the internal organization of the agencies which they head, they cannot be held responsible for administration and results. Executive agencies, especially after they are well established, ordinarily acquire influential friends and are able to resist proposed changes by statute. Congress has passed many statutes creating new agencies and revising existing departments and agencies, but it has been unable to effect general reorganizations needed to promote greater efficiency and economy and to bring about improved coordination, planning and control.

Recognizing its inability to cope with the problem by legislation, Congress has followed the practice since 1932 of delegating authority to the President to reorganize the executive departments and agencies. These acts have been passed, however, with considerable reluctance, for only limited periods of time, and except in wartime and once in the Great Depression, Congress has required that the President's actions be laid before it before going into effect, subject to its disapproval. Thus the legislative veto arose with respect to executive-reorganization, a determination which has always been regarded as a legislative function.

In 1905 President Theodore Roosevelt in his annual message to Congress stressed the need for reorganization of the executive machinery in order to make it as economical and efficient as the best business organization, broadly hinting that this was a task which should be delegated to the President. Executive reorganization, he stated, "is a task of complex detail and essentially executive in its nature; probably no legislative body, no matter how wise and able, could undertake it with reasonable prospect of success." Two years later he asked that the necesary authority to reorganize the executive departments and agencies be granted to the President.[3] The recommendation fell on deaf ears. Congress not only declined to grant this authority, but also cut off the funds of the Keep Committee set up by the President to study the organization and administration of the government, and later forbade the assignment of government employees to this work.

President Taft repeatedly recommended a thorough reorganization of the executive branch and the adoption of improved administrative methods, but without success. In 1910 Congress granted him $100,000 to conduct an inquiry, and a year later Taft created the Commission on Efficiency and Economy, which made numerous studies of the organization and management of the government. The Commission received little support from Congress, which looked askance at its proposal for a national budget system, and refused to vote it further funds, forcing its termination in 1913.[4]

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3. James D. Richardson, Messages and Papers of the Presidents, New York, 1918, Vol. XIV, pp. 6989, 7105.

4. Ibid.

In 1918, during the First World War, Congress passed the Overman Act, granting the President the power to reorganize and regroup executive agencies, to make transfers and consolidations, and to create new agencies needed for the conduct of war activities. No requirement was made that such reorganization orders should be reported in advance to the Congress, nor were they subject to its disapproval, but at the end of the war the agencies were to revert to their former status. The President was not authorized to abolish agencies created by statute, but could recommend to Congress their abolition. The act was passed at the President's request, apparently to head off several reorganization bills to which he objected. Acting under his war powers, he had already created a number of important war agencies. During the debate on the bill, Senator Knox, former Attorney General and former Secretary of State, stated that under his war powers, the President had "full constitutional power to make such transfers of functions and consolidations of agencies" without statutory provision.[5]

In response to the widespread demand after the war for reorganization and consolidation of the greatly expanded executive departments and agencies, in 1920 Congress established a Joint Committee on Reorganization. The following year President Harding appointed a Cabinet committee on the subject and Congress, in order to facilitate the cooperation of the two groups, enlarged its Joint Committee to include a person designated by the President. This effort failed to accomplish any results although a reorganization plan which merged the War and Navy Departments was proposed. Testifying before the Joint Committee in 1920, Secretary of Commerce Herbert Hoover urged that the authority to reorganize the executive departments, within defined principles, be granted to the President. After he became President in 1929 this was one of the major recommendations which he made to Congress in several messages, but it was not until 1932, in the midst of the depression, that Congress granted him this power as an economy move. Senator George of Georgia introduced a joint resolution patterned after the Overman Act of 1918 to grant this power to the President. The Senate Finance Committee, to which it was referred, added an amendment requiring that the President's reorganization orders be submitted to Congress before going into effect, and be subject to disapproval by a concurrent resolution of the two houses. This measure never came to vote in the Senate, but late in the session a similar bill proposed by the Select Committee on Economy of the House of Representatives passed both houses and became law. This measure, known as the Economy Act of 1932, provided that the President's reorganization orders must be submitted to Congress while it was in session and could be set aside within the required period of sixty days by a simple resolution of either house.

Utilizing the authority of this act, President Hoover submitted eleven reorganization orders to Congress in December, 1932, following his defeat for reelection. These orders, which reorganized and consolidated the activities of 54 separate bureaus and agencies, were all set aside by a resolution passed by the House in a strictly partisan vote. Those opposed contended that the reorganization of the executive departments and agencies should be left to the newly elected President shortly to take office. President Hoover issued a statement that unless Congress granted his successor greater authority no reorganization would be effected. Earlier he had recommended the use of joint resolutions as the proper method for Congress to disapprove the President's reorganization orders.[6]

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5. Quoted by Louis Brownlow, "Reconversion of the Federal Administrative Machinery from War to Peace", Public Administration Review, Vol. IV, (1944), p. 321.

6. The above historical account is based largely on Peter Schauffler, op cit., pp. 92-136.

The legislative veto provision of the Economy Act of 1932 was held to be unconstitutional by Attorney General William G. Mitchell in an opinion which President Hoover transmitted to Congress with a message vetoing another bill. In this opinion, which was to influence subsequent legislation, the Attorney General stated:

> It must be assumed that the functions of the President under this Act were executive in their nature or they could not have been constitutionally conferred upon him, and so there was set up a method by which one House of the Congress might disapprove executive action. No one would question the power of Congress to provide for delay in the execution of such an administrative order, or its power to withdraw the authority to make the order, provided the withdrawal takes the form of legislation. The attempt to give either House, by action which is not legislation, power to disapprove administrative acts, raises a grave question as to the validity of the entire provision of the Act.[7]

Shortly after President Roosevelt took office, Congress passed the Economy Act of 1933 in which it granted him far wider powers of reorganization than it had granted his predecessor. Because of Attorney General Mitchell's opinion, the legislative veto provision was omitted, but the President's reorganization orders were required to be submitted to Congress and lay before it for sixty days while it was in session. Later the Act was amended to permit the orders to go into effect after the adjournment of Congress. They could be set aside only by an act of Congress. During the two years this Act was in effect, President Roosevelt issued 27 reorganization orders, a number of which were of considerable importance, as, for example, the merger of the several independent agricultural credit agencies into a single Farm Credit Administration. Because of congressional opposition, one order which would have had the effect of reducing certain agricultural activities was suspended and later canceled.

When the authority under this act expired in 1935, President Roosevelt did not seek its extension. In the meantime, numerous temporary and regular agencies were being established outside of the regular executive departments. By 1936 it was widely felt that the time had come to place many of these new agencies under the regular departments, to consolidate and reorganize others, and to reduce the number of independent agencies reporting to the President. In that year the President created by executive order his Committee on Administrative Management, and on invitation of the President both houses of Congress established select committees to conduct parallel inquiries of executive organization. In 1937 the President's Committee on Administrative Management recommended that "the whole Executive Branch of the Government should be overhauled and the present 100 agencies reorganized under a few large departments in which every executive activity would find its place." It recommended that two new executive departments, Social Welfare and Public Works, be created, making twelve in all, and that the President be authorized to assign all of the executive functions to these twelve departments. The Committee pointed out that reorganization is a continuing task, intimately related to the day-to-day work of the departments, and that each change required careful research and detailed consideration of operating problems. "In other words," stated the Committee, "the task of reorganization is inherently executive in character and must be entrusted to the Executive as a continuing responsibility."[8]

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7. Opinions of the Attorney General, Vol. 37, pp. 63-64.

8. Administrative Management in the United States, 1937, pp. 3, 31-35.

The administration bill to put into effect the President's administrative reform program authorized him to reorganize the executive departments and agencies, following similar provisions in the 1933 Economy Act. No provision was included for a legislative veto of the President's reorganization orders, but they were required to be submitted to Congress in advance.

The President's administrative management bill was stalled in Congress after the bitter fight over the President's proposal to increase the size of the Supreme Court. When it finally emerged from the committee in 1938, it was vigorously opposed and labeled by the President's opponents as a dictatorship bill. After a debate extending over two years, a greatly modified bill, which granted the President the authority to reorganize the executive departments and agencies, subject to a veto by Congress, was finally enacted in 1939. In order to get around the constitutional objections to the legislative veto, the Reorganization Act of 1939 provided that the President should submit reorganization plans instead of executive order to Congress, and these plans were subject to disapproval within sixty days by concurrent resolution. In defense of the constitutionality of this provision, it was urged that although Congress could not pass upon the executive orders of the President, it could do so with respect to plans. It was also contended that the bill made the President the "ministerial agent" of Congress for the purpose of reorganizations, and hence Congress could attach conditions in its grant of authority to its agent and require that his plans be submitted to it for its final determination. The use of the concurrent resolution to veto the President's reorganization plans was substituted for the veto by simple resolution provided in the 1932 Economy Act, thus meeting in part the objections of Attorney General Mitchell. Despite these changes, opponents contended that the legislative veto was unconstitutional, while the administration supporters in Congress defended the bill. The President approved the bill without questioning its constitutionality. The precedent of the legislative veto thus established was soon included in other legislation and within a few years individual committees were given a veto power over specified executive decisions.

President Roosevelt acted without delay and submitted five important reorganization plans to Congress. One of these established the Executive Office of the President, to which the Bureau of the Budget and the National Resources Planning Board were transferred; another created the Office of Emergency Management, which was called into existence in 1940 and served as the legal basis for numerous civilian defense mobilization and coordination agencies before and during World War II; and a third plan provided for the establishment of three agencies, the Federal Works Agency, Federal Security Agency, and Federal Loans Agency, which were comparable to executive departments, though without departmental status. All five plans were permitted by Congress to go into effect. In 1940 the President submitted three additional plans, one of which was disapproved by the House of Representatives, but was sustained by the Senate.

When the Reorganization Act of 1939 expired in 1941 it was not renewed, but eleven days after Pearl Harbor Congress passed the First War Powers Act of 1941, in which it granted the President sweeping authority to reorganize the executive agencies during the war, without a legislative veto. He made extensive use of the authority, altering the special war mobilization agencies and creating new ones when experience indicated the need. Early in the war a sweeping reorganization of the War Department was carried through by executive order. Although frequently criticized, the wartime organizations performed their tasks well, and changes were made from time to time. The reorganization authority of the President was essential to the successful conduct of the war.

Before the Second World War came to an end in 1945, President Truman sent a special message to Congress requesting that he be granted a peacetime reorganization authority similar to that provided in the 1939 Executive Reorganization Act. He recommended: (1) that the authority apply to all executive agencies, (2) that it be granted on a permanent rather than a temporary basis, and (3) that "the legislation should be sufficiently broad and flexible to permit any form of organization adjustment, large or small, for which necessity may arise." The bill reported by the Senate committee provided for a veto by either house, but was amended on the floor to require a concurrent resolution on the motion of Senator Byrd of Virginia, who stated that strong leadership by the President was essential to accomplish needed reorganizations. The number of exempted agencies was reduced from 21 under the 1939 Act to 12, but the grant of authority was limited to April 1, 1948. An amendment adopted in the House on the motion of Mr. Martin, the Republican leader, expressed the "expectation" of Congress that reorganization plans would accomplish a 25 percent reduction in the administrative agencies concerned. This "expectation" was not realized in any of the plans submitted, but such an economy provision enabled opponents of reorganization plans to attack every plan on this ground. Before the act expired in 1948, President Truman submitted seven plans, several of considerable importance. Six were disapproved by the House, but only two rejections were concurred in by the Senate.[9]

President Truman sought an extension of the authority when it expired in 1948, but the Republican Congress failed to act. In 1949 the authority was again granted to the President, but Congress declined to grant a permanent authority as urged by the President and recommended by the First Hoover Commission. An important change in the previous reorganization act was to provide a legislative veto by either house instead of by concurrent resolution, although as a compromise provision, a majority of all members of either house was required to reject a reorganization plan. The return to the veto by simple resolution disregarded the constitutional objections to the legislative veto by Attorney General Mitchell, but was insisted on by the Senate before it agreed to remove a number of exemptions and limitations contained in the previous act.[10] It was also indicated a growing reluctance of Congress to delegate this authority to the President.

During his second term President Truman made extensive use of the authority granted to him by the Reorganization Act of 1949, submitting in all 41 plans, of which 12 were rejected by one house. Many of these reorganization plans were designed to carry into effect the recommendations of the First Hoover Commission. One of the plans rejected by the action of one house was to create a Department of Health, Education and Welfare, which was subsequently approved when submitted by President Eisenhower in 1953. A plan to create a unified Defense Department was rejected, but an act was passed which created this Department. A plan to transfer the Bureau of Employment Security to the Labor Department was sustained, though it had earlier been rejected. Several plans submitted in 1952 which placed the heads of certain regional and field offices under civil service were strongly opposed in the Senate, and all but one were rejected. One of these plans reorganized the Bureau of Internal Revenue, abolished the political offices of collectors, and provided that the directors of the greatly reduced number of regional offices should be placed under civil service. Despite the opposition of the Senate committee, the plan was finally approved, largely because of the strong public support which it received. Similar plans, however, to cover under civil service other patronage

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9. See Joseph P. Harris, "Federal Executive Reorganization Re-examined: Wartime Current and Peacetime Trends", American Political Science Review, Vol. XL (Dec., 1946), pp. 1146-1149; John D. Millett, Government and Public Administration (New York, 1959), p. 130.

10. See Ferrel Heady, "The Reorganization Act of 1949", Public Administration Review, Vol. IX (1949), pp. 165-74.

positions, including collectors of customs, marshals, and first, second and third class postmasters, were disapproved in the Senate by large majorities.[11]

Shortly after taking office in 1953, President Eisenhower submitted two plans, one to create a new Department of Health, Education and Welfare, and another to reorganize the Department of Agriculture in accordance with Secretary Benson's views. Both were sustained. When the Reorganization Act of 1949 expired in 1953, he sought and secured an extension for a period of two years, and in 1955 and again in 1957 secured its further extension. In 1957 the Act was amended to permit either house to set aside a reorganization plan by a majority of those voting on the resolution instead of a majority of all members, as previously required.

President Eisenhower submitted 12 plans during his first two years in office, most of which were noncontroversial, and all were sustained. Thereafter he made relatively little use of the authority, submitting no plans in 1955, and only two plans in 1956, both of which were rejected because of the objections of the legislative committees of the House. Chairman Vinson of the House Armed Services Committee blocked a plan to create an Assistant Secretary for Research in each of the armed services, not because of opposition to the proposal, but on the ground that these positions should be created by ordinary legislation. A bill to accomplish this purpose passed the House of Representatives during the session, but failed to pass the Senate. The other plan submitted in 1956 was objected to by the Chairman of the House Committee on Banking and Currency, and was rejected. One plan was submitted and sustained in 1957 and one in 1958. Both were noncontroversial. It is significant to note that the reorganization of the Defense Department proposed by the President in 1958 was submitted in the form of recommended legislation instead of as a reorganization plan. Under the existing legislation, which permits a veto by a simple majority of either house, there is little advantage gained by the President in proposing reorganizations under this authority instead of recommending amendment of existing statutes. Unless the veto by concurrent resolution is restored, it seems unlikely that much use will be made of the reorganization authority granted to the President in the future.

The 1958 Defense Reorganization Act authorized the Secretary of Defense to transfer, reassign, consolidate or abolish functions within the Department, provided that any such action with respect to a function established by law should be reported to the Armed Services Committees of Congress while it was in session, and could be set aside by a resolution of either house acting under the procedure of the 1949 Reorganization Act.[12] This appears to be the first instance of a legislative veto of a reorganization made by the head of a department.

2. Legislative Veto of Other Executive Actions

The precedent created by the 1939 Reorganization Act was quickly extended to other legislation. The Alien Registration Act of 1940 authorized the Attorney General to suspend the deportation of aliens of good moral character if deportation would result in hardship to dependents who were legal residents. Suspensions of deportation for more than six months were required to be reported to Congress at the beginning of the next session, and if not set aside by Congress during the session would become permanent.[13] From 1940 to June 30, 1947, the Attorney

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11. See Joseph P. Harris, Advice and Consent of the Senate (Berkeley, 1953), pp. 332-56

12. Public Law 85-599, sec. 3.

13. 54 Stat. 672 (1940). See Harvey Mansfield, "The Legislative Veto and the Deportation of Aliens", Public Administration Review, Vol. 1 (1941), pp. 281-86.

General reported 20,444 suspensions, none of which were set aside by Congress.[14] In 1948 the Act was amended to require affirmative action by concurrent resolution of Congress to suspend deportation. The reasons given for the change by the Senate Judiciary Committee was that under the previous procedure deportation cases were "almost automatically shelved in favor of other matters in which affirmative action was required. The committee cannot bring itself to the view that Congress should relinquish its prerogative to pass upon these referral cases."[15] After the change in the law, Congress passed many concurrent resolutions approving suspension of deportation, but a small number of cases failed to win its approval, and a very large number of cases were pending at the end of each session. These delays led Congress to amend the law in 1952 and again in 1956 to return to the former procedure, except in cases in which the alien was deportable for criminal acts or association with a subversive organization, which require the affirmative approval of Congress. An act of 1957 authorizing the Attorney General to change the status of up to fifty persons from temporary to permanent residents required that each case be reported to Congress, and could be set aside by a resolution of either house.[16]

An act of 1946, authorizing the Secretary of the Navy to transfer title of obsolete vessels and other articles of war to states and other designated bodies required all such transfers to be reported in advance to Congress, subject to its disapproval.[17] Similarly the Rubber Plants Disposal Act of 1953[18] required all contracts for the disposal or sale of these plants to be reported to Congress, and authorized either house to set aside all or a part of any proposed contract. The purpose of the legislative veto was to assure that the plants would be sold principally to smaller companies. Of the 27 plants sold, three resolutions disapproving the sale were introduced in the House and four in the Senate, but only one sale was set aside.[19]

Two acts were passed in 1958 providing a legislative veto by concurrent resolution. One of these amended the Atomic Energy Act of 1954 to authorize the President to transfer atomic secrets to allied nations, requiring such proposals to be submitted to Congress sixty days before going into effect, subject to disapproval by concurrent resolution. (Public Law 85-479). The Trade Agreements Extension Act (Public Law 85-599) provided that Congress could by a two-thirds vote in each house override the action of the President rejecting a recommendation of the Tariff Commission for tariff relief.

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14. See Robert W. Ginnane, loc. cit., p. 583.

15. Senate Report 1204, 80 Cong., 2 sess. (1948), p. 4

16. 71 Stat. 643 (1957), Sec. 13. The Act was intended to apply to high-ranking diplomats and U.N. officials.

17. 48 Stat. 564 (1946).

18. 67 Stat. 408 (1953).

19. See Rhode, op. cit.

3. Other Uses of Resolutions to Control Administration

Numerous wartime statutes granting unusual authority to the President, starting with the Lend-Lease Act of 1941, provided that Congress could terminate these acts by concurrent resolution. Several foreign aid acts passed since the end of the recent war have contained similar provisions, some providing that Congress may by concurrent resolution discontinue aid to any country. This use of concurrent resolutions to repeal or to modify previous acts of Congress is subject to serious constitutional objections, but has not been tested in the courts. Congress has also provided in a number of acts that certain statutory provisions will become effective upon the passage of concurrent resolutions.[20]

An amendment to the Universal Military Training and Service Act adopted in 1951 (65 Stat. 75, 80) provided that Congress thereafter could by concurrent resolution reduce the terms of service or eliminate the requirement of compulsory service for any age group. Similarly, the Federal Highway Act of 1956 (70 Stat., 379, sec. 108 (c) , which provided for a new formula for allocating federal highway aid to the states after 1960, required that the allocations to the several states under the new formula to be reported to Congress and be approved by it by concurrent resolution before going into effect.

An act of 1958 (P.L. 85-911) relating to boating safety authorized the issuance of administrative regulations governing the numbering of boats and the reporting of accidents. An amendment to the bill to require advance reporting of such regulations and providing for a congressional veto was rejected by the House, but the Senate added a provision requiring advance submission of such proposed regulations to Congress, but without a legislative veto. Heretofore Congress has never required administrative regulations issued under statutory authority to be laid before it. This minor act may become significant as a precedent for future requirement of advance reporting of administrative regulations in other fields. The British Parliament has long required the reporting of administrative orders and regulations, though not in advance, and certain classes of regulations must subsequently be ratified by Parliament. Parliament, however, has never required advance submission of proposed executive acts for its consideration, as Congress has done in recent years, and would consider such a requirement as contrary to the constitutional principle of Cabinet and ministerial responsibility for the administration of the departments.

In two instances Congress has provided for the removal of public officials by resolutions. The budget and accounting bill of 1920 provided for the removal of the Comptroller General, who was regarded as an agent of Congress, by concurrent resolution, and the bill was vetoed by President Wilson because of this provision, which he regarded as unconstitutional. A year later when the bill was repassed, it provided for the removal of this officer by joint resolution, and was signed by President Harding and became law. The British Comptroller and Auditor General, it may be noted, is removable only by the joint action of the two houses of Parliament. The other instance of the use of resolution to remove public officials is found in the Tennessee Valley Authority Act, which provides that members of the Board may be removed by concurrent resolution. This provision was subsequently held not to interfere with the President's power of removal.[21]

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20. For a review of this type of legislation, see Robert W. Ginnane, loc. cit. and Howard White, "Executive Responsibility to Congress via Concurrent Resolution", American Political Science Review, Vol. 36 (1942), pp. 895-900. In a confidential memorandum to his Attorney General, President Roosevelt agreed with the opponents that the legislation was unconstitutional. See Robert H. Jackson, "A Presidential Legal Opinion," Harvard Law Review, Vol. 66 (1953), pp. 1353-1361.

21. Morgan v. T.V.A., 115 Fed. 2nd, p. 990 (6th Cir, 1940).

4. The Constitutional Issue [22]

The legislative veto by Congress of executive actions by concurrent resolutions or by a simple resolution has been challenged by several writers, first, as an unconstitutional infringement of the President's veto power; second, as contrary to th· specific provisions in the Constitution concerning the manner in which Congress shall exercise its legislative powers; and, third, as contrary to the constitutional division of powers among the three branches of the government. The recent practice of using concurrent resolutions to terminate or to call into effect statutory grants of authority and to modify statutes is even more questionable on constitutional grounds, while the use of simple resolutions by a single house for these purposes is objectionable on additional grounds.

The President's veto power is stated in the Constitution in the most explicit terms. Article I, section 7, provides that "every bill which shall have been passed by the House of the Representatives and the Senate, shall, before it become law, be presented to the President of the United States" for his approval or disapproval, and if disapproved, shall not become law unless repassed by a two thirds vote of eacl house. James Madison pointed out in the Constitutional Convention that "if the negative of the President was confined to bills, it would be evaded by acts under the form and name of resolutions, votes, etc.," and the following day a paragraph was added to read: "Every order, resolution, or vote to which the concurrence of the Senate and the House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and the House of Representatives..." [23]

The debates of the Constitutional Convention and the contemporary discussion of the veto power indicate that it was granted to the President primarily to enable him to defend himself against legislative encroachments, and only secondarily as a safeguard against bad laws. Hamilton wrote in Federalist (No. 73) that without the veto power the President would be "absolutely unable to defend himself against the depredations of the latter [legislature]. He might be gradually stripped of his authorities by successive resolutions, or annihilated by a single vote. . . . The primary inducement to conferring the power in question upon the Executive is to enable him to defend himself; the secondary one is to increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence or design." It was regarded as one of the most important powers granted to the President. James Madison warned in the Federalist (no. 43) that the legislative department, being the most powerful, would be the most likely to encroach on the functions of the other two. "The legislative department", he wrote, "is everywhere extending the sphere of its activity, drawing all powers into its impetuous vortex." He cautioned, moreover, that "mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyranical concentration of all the powers of government in the same hands."

The language of the Constitution and the contemporary discussions of the veto power of the President indicate beyond doubt that it was intended to apply to all actions of Congress which had the effect of law. "It would be difficult to conceive

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22. The leading review of the constitutional issues is by Robert W. Giannane, loc. cit., which is the basis of much of the following treatment. See also a note, "Laying on the Table", Harvard Law Review, Vol. 65, p. 637.

23. Jonathan Elliot (ed.), Debates on the Adoption of the Federal Constitution, Vol. 5 (1861), p. 431.

of language and history", states Ginnane, "which would more clearly require that all concurrent action of the two houses be subject to the President's approval or veto."[24] The only exception, which was specifically mentioned in the Constitution, was votes on adjournment. Nevertheless, it has been the practice of Congress throughout its history not to submit concurrent resolutions to the President for his signature. Until recently they were used only for the internal management of Congress itself, such as printing, creating joint committees; for the expression of opinions which had no legal effect, and for submitting constitutional amendments to the states, a power granted to Congress alone. In 1897, on instructions of the Senate, the Senate Judiciary Committee submitted a report on the use of joint and concurrent resolution, in which it concluded: " . . whether concurrent resolutions are required to be submitted to the President of the United States must depend, not upon their mere form, but upon the fact whether they contain matter which is properly to be regarded as legislative in character and effect. If they do, they must be presented for his approval; otherwise, they need not be."[25]

The constitutionality of the legislative veto of executive acts by concurrent or simple resolutions has not been passed on by the courts, and it may be argued that twenty years of accepted usage has sanctioned the practice. The President has accepted the legislative veto in order to secure desired and needed grants of authority.

In defense of the legislative veto by resolution of one or both houses it has been contended that in granting authority to executive officers, which it is free to withhold, Congress may validly attach the requirement of prior consultation with it, and reserve the right to reject executive proposals. In the past Congress has often enacted legislation contingent upon future events, upon the findings of specified facts by executive officers, or in the case of certain agricultural programs, upon the favorable vote of the farmers affected. Why then, it is asked, may not Congress similarly specify, as a condition to the exercise of authority, that the proposed action be laid before it, subject to its disapproval within a specified time?[26] The analogy is easily seen to be defective. It is one thing for Congress to enact legislation which is contingent upon the occurrence of certain events, or upon the determination of certain facts by executive officers, or even the vote of certain groups of the population; it is quite another thing for Congress to reserve to itself the right to determine in the future whether an executive decision made in pursuance of law shall be carried out. In one case the condition is external to Congress; its action is complete when the legislation is enacted; in the other case the condition involves the future decision by Congress itself, and in a manner not sanctioned by the Constitution. Congress has the power to set aside or to reverse executive decisions, provided it acts in accordance with the Constitution, but it cannot subvert the Constitution through the guise of attaching conditions to laws which it enacts.

The legislative veto by concurrent or simple resolution of executive decisions which have been made under statutory authority, as, for example, the deportation of aliens or contracts for the disposal of rubber plants, appears clearly invalid. The Constitution does not sanction legislative participation in executive actions, which is involved in passing upon proposed executive decisions. Nor does it

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24. Loc. cit.

25. S. Rept. 1335, 54th Cong., 2d sess., p. 8 (1897), quoted in Hind's Precedents of the House of Representatives (1907), pp. 329-31.

26. See House Rept. No. 120, 76th Cong., 1st sess., (1939), p. 6; also E. S. Corwin, The President, Office and Powers (New York, 1948), p. 159.

authorize Congress to take actions having legal effect in this manner. The termination of statutes, the discontinuance of foreign aid to particular countries, and the revision of the regulations concerning military service by concurrent resolutions is likewise contrary to explicit provisions of the Constitution.

The legislative veto of the President's reorganization plans, however, may be defended on special grounds not applicable to other legislation of this type. It was contended in the 1939 debate that the Reorganization Act made the President the "ministerial agent" of the Congress, an argument so dubious that it does nothing to strengthen the case. The eupheumism of labeling his reorganization proposals as "plans" instead of orders does not alter their character or effect. A more valid defense of the constitutionality of the legislative veto of the President's reorganization proposals is to be found in an examination of the nature of the authority delegated. Congress has always regarded, and properly so, the determination of the major features of the executive organization as a legislative function. The reorganization acts, it should be noted, grant the President the authority to set aside existing statutes governing executive organization. Since this is true, a strong case can be made for requiring his proposals to be submitted in advance to Congress and permitting it to reject them in a manner which is not subject to the President's veto.

It may be questioned, however, whether in view of the specific provisions of the Constitution, Congress can exercise a legislative veto over the President's executive reorganization plans by means of concurrent resolutions. Opponents of the executive reorganization acts urged that the only method sanctioned by the Constitution is for the President to recommend reorganizations to Congress, and for it to act on these recommendations through ordinanry legislation. A reorganization act which so provided would have no meaning, for the President has a constitutional power to make recommendations to Congress, which cannot be granted, taken away, or controlled by statute. The history of executive reorganizations by statute over many years indicates beyond question that it is not an effective procedure for bringing about urgently needed changes without long delays. The procedure provided by the reorganization acts of 1939 and 1945, whereby the President is authorized to submit reorganization plans to Congress, which become effective if not set aside by concurrent resolution within sixty days, has proved to be a far more suitable method, and one which preserves the powers both of Congress and the President. The President is not deprived of his veto power by these acts, for he has already expressed his views in his reorganization plans, which Congress must accept or reject without revision. He does not need the veto to protect himself against amendments, as in the case of his legislative recommendations, which may be amended by Congress so as to make them unacceptable to him. It would be anomolous for the President to be able to veto the decision of both houses of Congress rejecting his plans. His power is not diminished by the reorganization acts, and the same is also true of Congress, which does not forgo its power to revise the executive organization by legislation.

The veto of the President's reorganization plans by a resolution of one house, however, cannot be defended on constitutional grounds. The legislative power is granted to the two houses of Congress, and cannot be exercised by one alone. The veto by one house is also objectionable on practical grounds, for it defeats the whole purpose of the legislation, as will be pointed out in the following section.

5. Conclusions

The legislative veto by concurrent resolution has proved to be a suitable device to facilitate the cooperation of the Congress and the President in effecting needed revisions of the organization of executive departments and agencies. Only

by reserving the right to examine and pass upon the President's plans for reorganization before they go into effect has Congress been willing, except in time of war or great national emergency, to delegate the necessary authority to the President. The fact also that many executive agencies have strong backing in Congress, as well as the support of powerful clientelle organizations, impels Congress to reserve to itself the final determination of executive reorganizations which supersede existing law. The grant of authority to the President to propose executive reorganizations, which are subject to disapproval by Congress (but do not require its affirmative approval), appears to be the only practicable alternative to reorganization by ordinary legislation, which has proved to be unworkable.

It may be contended that the President should have a permanent authority to make executive reorganizations, without being subject to a legislative veto, merely being required to report such changes to Congress for a specified period before they are put into effect. Indeed, this power was granted to the President in both World Wars and also in 1933, and was exercised without serious criticism. It enabled him to act vigorously and promptly, which was essential in wartime. If a President were to use such a grant of authority in a manner which incurred serious criticism, Congress would not be without a remedy. Not only could it enact legislation nullifying changes which it found objectionable, which any President would be foolhardy to veto, but it could use its power over appropriations to force compliance with its wishes. Nevertheless, the legislative veto of executive reorganizations by the President is essential in peacetime, for otherwise Congress would be unwilling to delegate adequate authority to the President to reorganize, and would insist upon numerous exemptions which would defeat needed reorganizations.

The authority granted to the President by the reorganization acts, especially those of 1939 and 1945, enabled him to take the leadership in planning needed revisions of the executive organization. He enlisted the aid and advice of executive departments and agencies throughout the government, and assigned the detailed task of preparing the necessary plans to the Bureau of the Budget. Presidents Roosevelt and Truman were able, with the concurrence of Congress, to effect numerous reorganizations which probably could not have been accomplished through ordinary legislation. Except during his first two years in office, President Eisenhower made less use of the power. Substantial changes in executive organization require the careful attention to details, the intimate knowledge of operations, and the consideration of many factors which can be fully known only to the responsible executive officers or to staff agencies which have made an intensive study of the subject. For these reasons Congress has found itself unable to cope with the problem without looking to the President for leadership.

The methods provided by the 1939 and 1945 reorganization acts proved to be well suited to accomplish reorganizations of middle grade importance, especially changes which involved two or more departments and changes within a single department that were blocked because of existing statutory provisions. It was not so well suited, however, for major changes, such as the creation or substantial revision of executive departments, which Congress prefers to consider through ordinary legislation instead of through presidential reorganization plans. Under the rules of Congress, the reorganization plans of the President are referred to the Committees on Government Operations of the two houses, while proposed changes by legislation are considered by the legislative committees -- an important consideration which has led to the defeat of a number of reorganization plans. Minor changes in organization within a single agency, provided the organization is not prescribed by statute, are handled by the direct action of the responsible head without referral to Congress. The vast majority of organization changes are made in this manner at present. Department heads must be permitted authority to make such internal

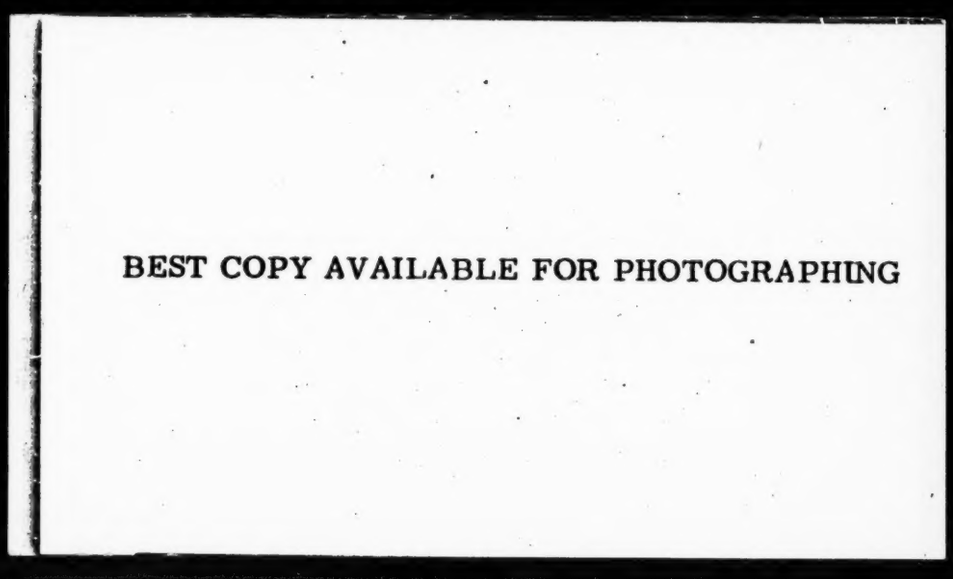
changes if they are to be hald responsible for administration.

The authority delegated to the President to reorganize the executive departments and agencies is extremely slight if his plans are subject to a veto by either house, as has been true since 1949. Any reorganization of importance is almost certain to be opposed, especially by the agencies affected, their friends in Congress, and outside organizations. Those who benefit by the activities of an agency fear that any change of its organization or the assignment of its functions may lead to policy and program changes adverse to their interests. The active opposition of these groups, in which they are joined by the legislative committees having jurisdiction over department legislation, and by members of the opposition party who want to embarrass the administration, is ordinarily sufficient to bring about its disapproval in one house. The President and his advisors, aware of the danger of rejection, will hesitate to submit any reorganization plan, regardless of its merits, that is likely to be opposed. Every defeat which the President suffers at the hands of Congress weakens his leadership. If the concurrence of the two houses is required to veto the President's reorganization plans, he is much better able to defend his plans and to gain the support of at least one house. If often happens that the reasons for rejection by one house are not shared by the other. Unless Congress returns to the use of the concurrent resolution to veto the President's reorganization plans, it is unlikely that much use will be made of the authority by the President in the future and the purpose of the reorganization acts will be largely nullified.

The use of the legislative veto to enable Congress to pass upon other executive acts, such as individual cases of deportation of aliens, is highly questionable on administrative as well as constitutional grounds. The very fact that there were more than 20,000 such cases during a seven year period from 1940 to 1947, none of which were set aside by Congress, indicates that it is not able to consider and act upon individual cases. It would be far better for Congress to lay down the standards and policies to be followed and subsequently to check up on the administration of the law, holding the administrative officers responsible, instead of essaying to act as an appeals board. The procedure used in the Rubber Plants Disposal Act, which authorized either house to set aside contracts for the disposal of individual plants, does not commend itself, for it is likely to open the door to political influence and intrigue.

The provision for the termination of statutes by concurrent resolution, which was widely used in grants of unusual authority to the President during wartime, is patently unconstitutional. It does not appear that any use was made of this form of veto. A better procedure would be to make such grants for only a limited time, and for Congress to make provision to enable it to hold the officials in charge strictly responsible for their administration.

It is noteworthy that Congress has not provided the legislative veto in the area where it would be most suitable and most defensible, namely, administrative rules, orders, and regulations. Congress might well require such sub-legislation to be laid before it, reserving the right to set aside certain classes of regulations. This practice has long been followed by the British Parliament, as discussed elsewhere in this volume, and has permitted a far wider delegation of rule-making authority to executive agencies than in this country. While the legislative veto of individual executive acts is subject to serious criticism as contrary to the principle of separation of powers, destructive of executive responsibility, and likely to involve the legislature in a mass of detailed decisions at the expense of its more important functions, the legislative veto of administrative regulations of general application which have the effect of law has much to commend it, provided it is not applied indiscriminately to the great mass of such regulations.


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CONGRESSIONAL COMMITTEE VETO OF EXECUTIVE DECISIONS

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After the precedent of the legislative veto by resolution of one or both houses was established and accepted by the administration, the next step was to delegate this authority to individual committees, without requiring a resolution to be passed by either house. If Congress may require proposed executive actions or plans to be laid before it before going into effect, and set them aside by concurrent or simple resolution, it was reasoned that the same authority may be exercised by congressional committees. The first act to authorize a committee veto of executive decisions was the Navy Construction Act of 1944, which required the Secretary of the Navy to "come into agreement" with the Naval Affairs Committees before expending funds for the acquisition, disposal, or leasing of lands for naval purposes. The "coming into agreement" requirement was later extended to all the armed services and applied to construction as well as real estate transactions. The committee veto of executive decisions was quickly extended under various provisions to other activities, including drilling for oil on naval petroleum reserves, lease-purchase contracts for federal buildings, termination of commercial type enterprises in the armed services, federal grants to watershed conservation projects, small reclamation projects, and public housing projects for military personnel. Various

other acts requiring advance reports of proposed executive actions or department consultation with congressional committees have also been passed. The effects of this type of legislation, as we shall see, is about the same as the formal requirement of committee approval. Numerous other bills providing for a committee veto, in one form or another, have been introduced in recent years, and frequently have passed one house.[1]

1. The leading studies and articles dealing with the committee veto include the following: William E. Rhode, Committee Clearance of Administrative Decisions, (Michigan State University Press, East Lansing, 1959), 71 pp.; and by the same author, Congressional Review of Decision Making by Committee Clearance and Resolution, (doctoral dissertation, Michigan State University, 1958); Peter Schauffler, A Study of the Legislative Veto, (doctoral dissertation, Harvard University, 1956); Robert W. Ginnane, "The Control of Federal Administration by Congressional Resolution and Committees", Harvard Law Review, Vol. 66, pp. 569-611; Joseph Cooper, "The Legislative Veto: Its Promise and Its Peril", Public Policy, Yearbook of the Graduate School of Public Administration, Vol. 7 (1957), pp. 128-174 and Peter Schauffler, "The Legislative Veto Revisited", Ibid., Vol. 8 (1958), pp. 296-327; J. Malcolm Smith and Cornelius P. Cotter, "Administrative Accountability: Reporting to Congress", Western Political Quarterly, Vol. 10 (June, 1957), pp. 405-415.

This type of legislation has been strongly opposed by the administration. Presidents Truman and Eisenhower have vetoed legislation re-

quiring the departments to "come into agreement" with congressional committees, but both have signed such acts when the need for the legislation was urgent. The committee veto is a recent development. During the first 150 years of the Republic it was generally accepted that under the constitutional principle of separation of powers, the function of administering the laws belonged exclusively to the executive branch, and neither Congress nor its committees could participate in executive decisions. The committee veto provides a marked departure from the historic practice, which if continued and widely used will result in a fundamental change in our form of government.

From the standpoint of Congress, the committee veto provides a new and potent control over the departments and shifts the balance of power in its favor. But it has another effect which impairs congressional control over administration; it seriously weakens the accountability of executive officers for the administration of functions entrusted to them. When advance approval is secured, the executive officers cannot later be held to account if the decisions turn out badly; the committees which approve the decisions have the final determination, but they cannot be held accountable for administrative results.

From the standpoint of the President and the executive branch, the committee veto is undesirable, for it weakens the authority of the President and department heads by requiring them to share the direction and control of the departments with the congressional committees. It also involves delays in carrying out executive decisions, and increases the political and local pressures on administration. On the other hand, the

committee veto has been instrumental in making Congress willing to delegate broad authority to the departments without the imposition of detailed statutory controls. Executive officers have usually been willing to pay this price for the delegation of needed authority without rigid statutory restrictions.

Legislative Provisions for the Committee Veto

Several different forms of legislative provisions have been used to provide for the committee veto of executive plans or decisions. In all cases the departments are required to submit advance reports on their proposed actions. The first legislation providing for the committee veto required the department to "come into agreement" with the congressional committees, which means, of course, the requirement of committee approval before the department may carry out its proposed action. Of the same effect was subsequent legislation which provided that a committee of either House could disapprove the proposed action within the required laying period. Because of the strong objections of the President to this type of legislation on constitutional and other grounds, resulting in several vetoes, a different legislative formula was found.

The second form of legislation ties the committee veto to the authorization of appropriations. This form was first used in the Public Buildings Contract Purchase Act of 1954, which authorized contracts for the lease purchase of federal buildings, but provided that no funds could be appropriated for annual payments on such contracts in excess of $20,000 unless they had been approved by the Public Works Committees.

Although this provision has the same effect as the "coming into agreement" requirement, the legislation was accepted by the President on the advice of the Attorney General that it was not constitutionally objectionable, but merely revised the rules of Congress in voting appropriations.

The third form of committee veto legislation requires advance reports of proposed executive actions, without any specific provision for a committee veto. An alternative form is to require the departments to consult with the congressional committees. The effect is much the same as though committee approval was required. The requirement of advance reports or consultation gives the committees time to inquire into the proposed action and to enter objections. Although not legally required to follow the wishes of the committees, department officers would be foolhardy to proceed over committee objections. In order to make doubly sure that the departments follow the wishes of the congressional committees, certain acts provide a long waiting period (six months in one case), which may be waived by the committees if they approve the proposed action.

The following section consists of a brief review of the principal acts of Congress providing for the committee review, grouped according to the form of legislative device used. A brief account is also given of the operation of each of these acts. Finally, several instances are cited in which congressional committees have vetoed executive decisions or plans without benefit of specific statutory authorization.

1. Legislation Requiring Committee Approval of Executive Decisions

One of the earliest attempts by Congress to authorize a committee to pass upon executive decisions was a rider introduced by Senator Smoot

to an appropriations bill in 1920, providing that no journal, magazine, periodical or similar government publication should be issued or discontinued without the approval of the Joint Committee on Printing, which was also authorized to issue regulations. The bill was vetoed by President Wilson as an unconstitutional encroachment on executive functions. "The Congress has the right," he stated, "to confer on its committees full authority for purposes of investigation and the accumulation of information for its guidance, but I do not concede the right, and certainly not the wisdom of the Congress of endowing a committee of either House or a joint committee of both Houses with the power to prescribe 'regulations' under which the executive departments may operate . . . . I regard the provision in question as an invasion of the province of the executive and calculated to result in unwarranted interference in the processes of good government, producing confusion, irritation, and distrust."[1] President Wilson also objected to an earlier appropriations act which authorized the Public Building Commission, consisting of four members of Congress and three executive officers, to have "absolute control" of the allotment of all space in almost all government buildings in the District of Columbia, which he declared was an executive function. The Commission continued, however, and in 1926 was given the additional authority of approving the acquisition of buildings and building sites in the District of Columbia. It was subsequently abolished by an executive reorganization order in 1933.

1. Congressional Record, Vol. 59, pt. 7 (1920), pp. 7066-67.

The first act requiring an executive department to "come into agreement" with committees of Congress was the Navy Construction Authorization Act of 1944, which authorized the Secretary of the Navy to acquire land and to construct public works, subject to the proviso:

> That prior to the acquisition or disposal, by lease or otherwise, of any land acquired for naval use under the authority of this or any other Act, the Secretary of the Navy shall come into agreement with the Naval Affairs Committees of the Senate and the House of Representatives with respect to the terms of such prospective acquisitions or disposals.[1]

1. 58 Stat. 189 (1944).

Prior to the Second World War it was the practice of Congress to authorize individually each Navy installation or public works projects, but during the war the volume of construction became so great and the time element so urgent that it was no longer feasible to handle new projects and installations in this manner. In 1942, on the understanding that all acquisitions of land and leases would be submitted informally in advance to the Naval Affairs Committees for their approval, the Committees recommended and Congress voted a general authorization in lump sum without specifying the individual projects. The Navy Construction Authorization Act of 1944, accordingly, wrote into law the practice which had previously been followed by informal understanding.[2]

2. Statement of Representative Vinson, Congressional Record, Vol. 97, pt. 3 (1952), p. 3435.

This arrangement was agreed to by the Secretary of the Navy and was not objected to by the President when it was written into law. President Roosevelt did object to another act of the same year which had similar effect, and signed it under protest. This act authorized the Secretary of the Navy to enter into contracts for the production of oil from naval reserves, requiring prior consultation with the Naval Affairs Committees, and presumably their approval of such contracts. Although he signed the act, Roosevelt issued a statement to the press expressing his disagreement with this feature. This delegation to the two committees of Congress, he declared, disregarded "principles basic to our form of government. Efficient and economical administration can be achieved only by vesting authority to carry out the laws in an independent executive, and not in legislative committees. This act, in my opinion, impinges deeply upon this fundamental principle of good government embodied in the Constitution."[1]

1. New York Times, June 28, 1944, p. 10.

In 1949 an act authorizing the armed services to acquire land for use as a proving ground for guided missiles or other weapons required them to come into agreement with the Armed Services Committees.[2] In 1951, during the Korean War, a construction authorization bill applying to all three services provided that all acquisitions of real property, all leases having an annual rental of more than $10,000,

2. 63 Stat. 66 (1949).

all transfers of government owned real property, or reports of excess government owned real property for disposition could be made only after the agency had "come into agreement" with the committees. Because of the objections of the Corps of Engineers, river improvements, harbor and flood control projects were specifically exempted, as were grazing permits on military lands. During the debate Mr. Vinson, chairman of the House Armed Services Committee, said: "This bill will save millions, and millions, and millions of dollars; and, on the other hand, will allow us to keep close tabs on what goes on in the departments."[1]

1. Congressional Record, Vol. 97, pt. 3 (April 23, 1951), p. 4189.

President Truman strongly condemned this provision, stating in a message to Congress vetoing the bill:

> . . . . a legal requirement for the submission of countless real estate transactions to the scrutiny of congressional committees . . . would result in the imposition . . . a severe and unnecessary administrative burden on the Department of Defense. It would . . . also result in continuing delays that might well prove to be a serious impediment to the defense procurement program. . . . much greater and more serious delays [would result] from the inability of the Department of Defense to plan its operations in the future until the congressional committees have acted.

He pointed out also that the bill would "force a substantial degree of centralization in Washington of real estate transactions that could [then-

wise be more efficiently handled in the field", but offered to supply the committees with full information on any real estate transactions in which they were interested. In conclusion, President Truman stated:

> Finally, I am concerned by what appears to me to be a gradual trend on the part of the legislative branch to participate to an ever greater extent in the actual execution and administration of the laws. Under our system of government it is contemplated that the Congress will enact the laws and will leave their administration and execution to the executive branch.[1]

1. Ibid. (May 15, 1951), pp. 5374-5375. The Washington Post and Herald Tribune stated in an editorial commenting on the vetoed bills: "The real question is whether Congress is overstepping its proper function of supervising administrative action. We think it is."

A notable debate took place in the House before it voted 312 to 68 to override the veto. In defense of the bill Representative Vinson stated that its objective was to keep control in Congress over the land acquisitions and disposals of the Defense Department. Asked whether the bill would result in a trespass on executive functions, he replied in the negative, saying ". . . instead of delegating to a bureau [you] delegate it to yourselves, delegate it to a committee here in Congress. . . It is Government property and Congress should have some control over Government property."[2]

2. Ibid. (May 17, 1951), p. 5537.

Declaring that the bill would authorize the Armed Services Committees to administ r the law, Representative Multer inquired "When has the Constitution been changed so as to give this Congress the right to administer the laws that it enacts?" The same point was made by Representative Tackett of Arkansas, who said that the legislation would permit the committees of Congress "to administer the very laws this Congress adopts . . . to supervise the purchasing and selling of property by the defense agencies." Representative Holifield of California, who had written a letter to the President urging a veto, stated that the bill violated the proper division of labor and responsibilities between the executive and legislative branches. "The surest way to destroy responsibility and accountability in the administration is to make a committee of Congress a party to each and every administrative act of any importance, such as this bill does." Representative Patman of Texas maintained that the handling of real estate transactions was an executive function which Congress should not undertake, saying: "I do not believe we should get into the executive branch of government any more than the executive branch should get into the legislative branch. . . We have plenty to do in the legislative branch. We should do our own job better before attempting to run the executive branch."[1]

1. Ibid., pp. 5437-5441.

The Senate did not attempt to pass the bill over the President's veto, but four months later nearing the end of the session the House Armed Services Committee attached the same requirement of committee

approval to another military construction authorization bill, which was passed and signed by the President (P.L. 155; sec. 601) because of the urgent need for the legislation. The act provided that the Defense Department "shall come into agreement" with the Armed Services Committees on all real estate transactions involving in excess of $25,000, or an annual rental of $25,000. No time limit was provided for committee approval. The following year an act was passed requiring committee approval of the cost of construction of military works, "including those real estate actions pertaining thereto."[1]

1. 66 Stat. 606, 626 (1952).

The review of proposed real estate transactions is conducted by subcommittees of the Senate and House Armed Services Committees. Proposals are examined initially by a member of the subcommittee staff, and then referred to the member of the House from the district and to the Senators of the state to ascertain if they have any objection. Unless a question is raised, they are ordinarily approved without further consideration. If a proposal is questioned, hearings are normally conducted at which the Department and other interested persons may testify.

The volume of real estate and construction transactions reviewed by these committees is very great. In the first seven months of 1958 the House Real Estate and Construction Subcommittee considered and approved 151 real estate projects, one of which covered 37 installations,

and 113 housing projects covering 28,973 family units.[1] No statistics

1. Congressional Record, (August 6, 1958), p. 15045 (daily ed.).

are available on the number of proposed transactions which were not approved by the Committees. The second Hoover Commission task force on Real Property Management found that the requirement of committee approval of real estate transactions of over $25,000 was "cumbersome" and a "deterrent to orderly and efficient real property management by the Department of Defense." It reported that one of the greatest handicaps was the long delays encountered in securing the approval of both committees, which frequently required a year and in one case action was delayed for more than two years. The Hoover Commission criticized the arrangement as "congressional participation in the executive function of operation" and "an invasion of the executive by the legislative branch", and recommended repeal of the "coming into agreement" requirement.[2] The President

2. Executive Commission on the Organization of the Executive Branch of the Government, Real Property Management (June, 1955), pp. 35-36.

made the same recommendation in his budget message in 1958, but the act remains in effect and has frequently been cited as precedent for similar legislation.

One case coming before the Armed Services Committees which has attracted public attention was the proposed sale of the Philadelphia Army Base consisting of docks and wharves which handle approximately forty percent of the water shipments from the port of Philadelphia.

This facility was constructed near the end of the First World War, but has never been used by the government, and has been leased to a private corporation. When the Department of the Army, which now administers the property, proposed a renewal of the lease in 1954, the Senate Armed Services Committee referred the matter to the Bureau of the Budget, which recommended that the Base be sold instead of being rented. This was agreed to by the Department of the Army, but the Senate Committee held up the sale for several years in order to permit Congress to act on bills introduced by local Congressmen to sell the property to the City of Philadelphia at a nominal price. The case illustrates not only the delays that may be caused by the requirement of Committee approval of real estate transactions, but also the added pressures to dispose of government property in a manner highly favorable to local interests. The disposal of government real estate held by the Defense Department requires not only the approval of the Armed Services Committee of the Senate and House, but must also be reported in advance to the Government Operations Committee of both Houses, and an objection by either of these four Committees will prevent the sale.

Another act which required the Defense Department to "come into agreement" with congressional committees was the 1953 Supplemental Appropriation Act, which authorized it to transfer unused appropriations with the approval of the Appropriations Committees of the Senate and House, in addition to the required approval of the Armed Services Committees,[1] if the funds were used for a public works project.

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1. 67 Stat. 429 (1953).

Two recent bills with this provision were vetoed by the President on constitutional grounds. A 1954 bill authorized by the Secretary of the Army to transfer federally owned lands within Camp Blanding Military Reservation to the State of Florida after "coming into agreement" with the Armed Services Committees. In his veto message President Eisenhower stated:

> The practical effect would be to place the power to make such agreement jointly in the Secretary of the Army and the members of the Committees on Armed Services. In so doing the bill would violate the fundamental principle of the separation of powers prescribed in Articles I and II of the Constitution, which place the legislative power in the Congress and the executive power in the executive branch. The making of such a contract . . . is a purely executive or administrative function . . . Congress may not delegate to its members of committees the power to make such contracts either directly or by giving them poter to approve or disapprove a contract which an executive officer proposes to make. Moreover, such a procedure destroys the clear lines of responsibility which the Constitution provides.[1]

1. U.S. House of Representatives, 83 Cong., 2 sess., Doc. No. 430 (May 26, 1954).

A new bill which omitted this provision was passed and signed by the President.

Despite the veto of the Camp Blanding bill, Congress passed a similar bill in 1956. One section of the bill authorizing the construction of

family unit dwellings for the use of military or civilian personnel, and another section authorizing funds for the construction of TALOS missile facilities required the Defense Department to "come into agreement" with the Armed Services Committees. The Washington Post called the bill an "indefensible encroachment" on the President's authority.[1] Chairman

1. July 18, 1956.

Vinson defended the requirement with respect to housing on the ground that it would enable the Committee to "re-enter" this important military field, and said that the Committee would fail "to perform its function if it does not, from time to time, give the departments guidance in certain areas of activity."[2]

2. Congressional Record, Vol. 102, pt. 2, p. 5595.

President Eisenhower vetoed the bill as an unconstitutional encroachment on executive functions and stated that legislative oversight should be exercised by the requirement of timely reports.[3] Congress repassed

3. Congressional Record, Vol. 102, pt. 9, pp. 12958-59.

the bill, omitting this provision, but required instead that plans for such housing must be reported to the Committees six months before contracts were let, unless earlier approved.[4] The effect of this requirement

4. 70 Stat. 1018-1019 (1956).

was doubtless the same as the "coming into agreement" requirement. The

following year this requirement was dropped and specific authorization of such housing was required by acts of Congress.

An extraordinary provision of the legislative veto is found in the Supplemental Appropriation Act passed in 1952 (P.L. 547), which has been repeated from year to year. In this act the regulations of the Bureau of the Budget relating to housing allowances (Circular A-45) are given the effect of law, but it is provided that any amendment or revision of the regulations should be approved by the Chairman of the House Appropriations Committee. In this instance the veto is exercised not by the committees of Congress, but by one member. The provision placed the Bureau of the Budget in a quandary, not wishing to acquiesce in the propriety or the constitutionality of the requirement, or, on the other hand, to defy the powerful Chairman of the House Appropriations Committee. As a result, the regulations were not revised for several years. Finally in 1958 a rider was attached to an appropriations act (P.L. 85-468, sec. 208) requiring the Bureau to make a report to Congress on the operation of the order not later than January 31, 1959.

The Termination of Business Enterprises[1]

1. The following account is taken from a case study prepared by Miss Edith Carper for the Inter-University Case Program. The author is greatly indebted to Mr. Edwin A. Bock, Director of the ICP, for making the study available prior to publication.

In 1955 Congress attached a rider to the Defense Appropriation Act (P.L. 155, sec. 638) giving the Appropriations Committees the power to

pass upon proposed terminations of commercial type activities in the armed services and transfer of the work to private operation. The Act required that all decisions involving work that had been carried on for three years or more be reported and justified 90 days in advance to the two committees, which were authorized to disapprove such actions. The provision was dropped the following year in the expectation that similar legislation would be passed granting the veto power to the Armed Services Committees. Such a bill passed the House but was never acted on by the Senate. During the year that the provision was in effect, the Defense Department reported plans to discontinue operation of 112 business enterprises, including the famous ropewalk at Boston, which had manufactured rope and cable for the Navy since 1834, a chain forge factory, coffee roasting plants, several cement mixing plants, cobbler shops, two paint manufacturing plants (for a special type of paint used on the bottoms of ships), and various other activities, some large and many very small. The House Appropriations Committee disapproved nine plans, and the Senate Committee disapproved one. The other plans, mostly affecting small operations, became effective.

For many years the armed services have operated a variety of manufacturing or other plants, including ship yards, arsenals, powder and ammunition plants (which date from the Revolution), repair facilities, cleaning establishments, and many others. The Boston ropewalk was established by an act of Congress in 1834, and the Navy has roasted its own coffee since 1898. In 1954 the Defense Department was engaged in 47 categories of business activity, including manufacture of clothing, paint, ice

cream, chain and chlorine; operation of sawmills, bakeries, furniture repair shops, auto repair shops, tree nurseries, air and sea transportation fleets, and others. The first Hoover Commission recommended in 1949 that the government discontinue some thirty percent of its business activities that were competitive with private enterprise. In 1951 and 1952 the House Government Operations Committee held hearings on government conduct of such enterprises as coffee roasting, manufacture of clothing and paint, and tire retreading, and recommended that with few exceptions these commercial activities should be turned over to private enterprise. Congress, which initially prodded the administration to get out of these businesses, was later to assert controls which slowed down the process.

In 1952 the Department of Defense issued a directive to the armed services to survey their commercial and industrial type activities and to discontinue such facilities if their needs could be effectively and economically served by private enterprise. Few such activities, however, were discontinued. The Eisenhower administration went into office in 1953 pledged to take more vigorous action to end government competition with private enterprise. In 1953 and 1954 the House Government Operations Committee renewed its hearings and took voluminous testimony from various industries affected in opposition to government business activities. The Committee reported in 1954 that such activities by the government constituted a threat to private enterprise and imperilled the tax structure, and urged more vigorous steps to discontinue them. Eleven Democrats, including the Minority Leader, John McCormack, filed a reservation, stating

that they did not agree that "government activity in many fields is, per se, a bad thing." A bill introduced by Representative Clare Hoffman, declaring as a general policy that the government should terminate commercial activities, passed the House but was not acted on by the Senate.

The Senate Appropriations Committee in 1954 called on the Defense Department to survey its commercial activities in competition with small business and to report its findings and recommendations to the Committee. The following year the Senate Select Committee on Small Business demanded an aggressive attack on this "steadily growing cancer in our economy." In 1955 the second Hoover Commission recommended sharp curtailment of the 2,500 enterprises that the Department of Defense was conducting, representing an investment of approximately $15 billion, and the transfer of about 1,000 of these enterprises to private industry.

In the meantime the Eisenhower administration was moving ahead with its plans to get the government out of competition with private industry, which was labeled "creeping socialism." One of the first substantial activities proposed to be terminated was the Boston ropewalk. The Cordage Institute, the trade association in the industry, supported the proposal and stated that the industry was prepared to take over this activity. The United States Chamber of Commerce, which was conducting a drive to "get the government out of business", endorsed the proposal, but the Boston Chamber of Commerce took exactly the opposite stand. Boston interests, alarmed at the threat of loss of employment, enlisted the help of Massachusetts Congressmen. The Navy resisted the proposal to

close the ropewalk and attempted to keep it in operation on a reduced basis, but capitulated after the Bureau of the Budget issued a strong directive in January, 1955, stating that it was the policy of the government to discontinue commercial activities that could be provided by private enterprise.

By May, 1955, the Defense Department was making substantial progress in its program for investment of commercial activities, 171 having been discontinued. Already vigorous protests were being made to Congress, especially by unions whose members were threatened with being thrown out of employment. Congressmen rushed to the defense of government enterprises in their districts, responding to pleas of employees affected and local business interests, but their representations to the Defense Department were unavailing. Representative John W. McCormack of Massachusetts, Majority Leader, tried unsuccessfully to save the ropewalk and a chain forge shop in Boston, but was advised by the Navy that the ropewalk would be terminated in August, 1955. He informed his constituents that if the decision had been made "at the legislative level, I know I could block it. I blocked it in the last Congress, which was Republican controlled, and I know I could block it in this Congress, which is Democratic controlled, but it is going to be action by the executive branch."

Representative Robert Sikes (D. Florida), whose district includes the Pensacola Air Force Base, where the telephone exchange and certain other activities were planned to be discontinued, undertook to do something about it. Failing to persuade the Navy to accept his point of

view, he introduced a bill to provide for a legislative veto over such decisions, but the House Armed Services Committee, to which the bill was referred, shelved it after receiving an unfavorable report on the bill from the Defense Department. Representative Sikes then took his proposed legislation to the Defense Appropriations Subcommittee, and with the support of other members who had similar problems in their own districts, was able to persuade the Subcommittee to attach it as a rider (section 638) to the Defense Appropriations bill.

The bill came before the House for debate under a special rule which precluded any points of order from being made; otherwise this rider would have been ruled out of order as legislation in an appropriations bill. Representative Carl Vinson (D. Georgia), Chairman of the Armed Services Committee, which had failed to act on the same proposal, led the attack on the rider. Although a strong advocate of the committee veto as applied to real estate transactions (by his own Committee), he now opposed the committee veto of terminations of commercial type activities (by another Committee) and labeled it as a device to retain useless government enterprises and an unconstitutional "trespass upon an executive function". Representative Porter Hardy of Virginia, who was worried about plans to discontinue activities in his district, chided Mr. Vinson for being "off the beam" on this issue. Vinson retorted tartly, "I would be on the beam if I had a Navy yard in my district, as the gentleman has". The rider was defended largely by members who feared that the termination of activities in their districts would lead to unemployment. Representative Mendell Rivers of South Carolina, whose district includes

the Charleston Navy yard, observed that although he did not like to see legislation in an appropriation bill, "this is a time when it comes in pretty handy". The rider was sustained by a vote of 202 to 184.

Because of the urgent need of the armed services for funds (the act appropriated over $31 billion), President Eisenhower signed the bill, but at the same time sent a strong message to Congress protesting section 638, which the Attorney General had advised was unconstitutional. ". . . the Congress has no right to confer upon its committees the power to veto Executive action or to prevent Executive action from becoming effective." Saying that he considered it a "dangerous precedent," and would not acquiesce in this encroachment on executive authority, he served notice that the section would be regarded as invalid by the executive branch unless otherwise determined by a court of competent jurisdiction.

The President's message was angrily protested by members of Congress who had been responsible for the enactment of section 638. Representative Sikes declared that the President was seeking to place himself above the law, and Majority Leader McCormack called it nullification. The St. Louis Globe Democrat, however, called section 638 a "shotgun rider", a "political shenanigan" designed to prevent the abandonment of "shipyards, arsenals and even paint plants in the bailiwicks of influential Congressmen." Representative Hardy inquired of the Comptroller General what action he would take, and was advised that he would enforce the law and disallow any expenditures for plans vetoed by the congressional committees.

Despite the President's instructions to the contrary, the Defense Department concluded that it had no alternative but to observe the pro-

visions of the rider, and began at once reporting proposed terminations of commercial activities. Among the first so reported was the Boston ropewalk. Congress was adjourned and by agreement the proposed terminations were postponed until after the opening of the next session. At hearings conducted by the House Appropriations subcommittee, five Massachusetts Congressmen, two Democrats and three Republicans, appeared to oppose the plan to close the ropewalk and chain forge in Boston, and several other Representatives appeared in opposition to plans to close paint plants and other activities in their districts. They were accompanied by union representatives of the employees affected. Representatives of the National Coffee Association, the Cordage Institute, and the paint trade association appeared in support of the Department's plans to shut down these installations. The House Appropriations Committee disapproved the close-down of the ropewalk, chain forge, the paint plants in California and Virginia, and several other minor activities -- 9 altogether -- but permitted the other plans to go into effect. The Committee report complained that the Department had bothered it with reports of plans to terminate very small activities, several which involved less than one full-time employee.

In 1956 the House Armed Services Committee reported a lengthy bill dealing with matters that had previously been the subject of provisions in appropriation bills, which included a section providing for a legislative veto by concurrent resolution of terminations of commercial activities by the Defense Department. Anticipating the passage of this bill, which would accomplish the same purpose in a less constitutionally objec-

tionable manner, the House struck the rider in the Defense Appropriations bill. Subsequently the House passed the Armed Services Committee bill, but the Senate failed to act on it, thus bringing to an end the committee veto with respect to terminations of commercial activities in the armed services.

Several observations may be made from this experience with the committee veto. It required a vigorous and determined effort by the administration over several years to force the departments to comply with its policy of terminating commercial activities, unless there were strong reasons for continuing them. Each of the armed services was reluctant to close down long established activities and resisted the directives of the Defense Department. In many instances cogent reasons could be advanced for continuing these operations, including anticipated local protests against shutting them down. Members of Congress, especially members of key committees, are ordinarily able to prevent such actions from being taken in their own districts. In this case, however, the administration, pledged to "get the government out of business", was finally able despite congressional pressure to force the departments to comply with its policy.

Members of Congress from the districts affected, finding their representations to the departments unavailing, sought to secure a legislative sanction whereby the decision would be transferred from the executive to the legislative branch. The legislative veto provided this means. It was intended, as was intended by individual Congressmen of both parties to prevent the shut down of government activities in their

districts. Although unable to persuade the Defense Department, they usually had little difficulty in convincing the members of the Appropriations subcommittee what those activities should be combined. Congressional courtesy requires committees of Congress to accede, wherever possible, to the requests of their colleagues. As long as the legislative veto existed, local and particularistic pressures exerted through individual members were effective in preventing a policy strongly supported in the Congress and the country from being carried out. In the end the administration policy triumphed when Congress, after repealing the appropriations rider, failed to reassert its control by re-enacting the legislative veto in other legislation.

2. Committee Veto Via Authorization of Appropriations

The second legislative device used to provide for the committee veto was to require committee approval of proposed actions before funds were authorized to be appropriated. This device was first used in the Public Buildings Contract Purchase Act of 1954 (P.L. 540). An earlier bill passed in 1952, which authorized the Postmaster General to enter into lease-purchase contracts for the construction of post office buildings, required him to "come into agreement" with four congressional committees -- the Public Works Committees and the Post Office and Civil Service Committees of both Houses. This bill was twice vetoed by President Truman with the statement that it would infringe on the executive branch. "I do not dispute the right of Congress and its committees", stated the President, "to keep an informed knowledgeable review

actions made by the executive branch of the Government, but I do question the propriety and wisdom of giving committee the veto power over executive functions. . . ."[1]

1. Congressional Record, Vol. 98, pt. 7 (July 19, 1952), p. 9756.

In 1954 Congress passed another bill authorizing the Administrator of General Services and the Postmaster General to enter into lease-purchase contracts for the construction of public buildings. The bill passed by the House required that reports of such contracts be submitted to the Public Works Committees 30 days in advance, but the Senate Committee introduced an amendment to require "coming into agreement" with the committees before a contract could be executed. Senator Dirksen of Illinois strongly opposed this provision, saying:

> This measure in its present form would vest in two committees of the Congress a function which the constitution does not sanction. It gives two committees a veto over . . . ons of the executive branch which have been authorized by congressional enactment. Nowhere in the Constitution is mention made of committees of the Congress . . . the only authorized congressional action is action by both Houses and not by committees.[1]

1. Congressional Record, Vol. 100, pt. 4 (April 8, 1954) pp. 4877-79.

An amendment offered by Senator Dirksen to strike the "coming into agreement" provision and to substitute in its place merely the requirement of advance reports on proposed lease-purchase contracts was defeated. In

conference, however, the "coming into agreement" section was dropped because of constitutional objections and in its place provision was made that no funds could be appropriated for annual payments in excess of $20,000 on any lease-purchase contract unless the contract had been approved by the Senate and House Public Works Committees. The conference committee assured the two Houses that this language retained "the same degree of legislative responsibility as the Senate amendment". The President signed the bill on the advice of the Attorney General that this provision was within the power of Congress, and this act became the accepted pattern thereafter in providing the committee veto.

The results achieved under the lease-purchase act during the three years it was in effect were meager. Although 146 proposed projects, involving an estimated cost in excess of $700 million, were approved by the committees, the General Services Administration actually placed only one contract and the Post Office Department only three. All proposed projects, with a single exception (which was [illegible]red), received committee approval. The committees followed the practice of referring proposed projects to the Congressman from the district and to the Senators from the state, who invariably recommended approval. Before the Act expired in 1957, the Senate passed a bill renewing and amending it, but the House Public Works Committee, disappointed with the results under the lease-purchase procedure, reported instead a direct public building construction authorization bill for $1.5 billion, and defeated a proposal to extend the lease-purchase act. The division in the Committee followed party lines, the Democratic members opposing extension of the lease-purchase

act, while the Republican members submitted a minority report favoring extension.

Within a few days after the President had signed the lease-purchase act, Congress passed another important statute using the same formula. The Watershed Protection and Flood Prevention Act of 1954 (P.L. 566), which authorized the Secretary of Agriculture to make grants to co-operating state and local authorities for this purpose, requires that plans be approved by the committees of the House and Senate before an appropriation may be made. In practice, lump sum appropriations are made for this program, but the Secretary of Agriculture secures the approval of the committees of each House before entering into a contract.

This program has proved to be very popular and currently involves annual expenditures of about $60 million. Payments are made to land owners who follow the prescribed soil conservation practices in watershed areas. Approximately 100 projects have been approved, and more rejected. The reason given for requiring committee approval was to review the allocation of these projects to assure that a fair distribution was made among the several regions of the country. The requirement has resulted in increased congressional pressures on the Department to approve projects within the district of the member, but otherwise has had little effect.

The Small Projects Reclamation Act of 1956 (P.L. 984) provided that grants to local authorities must be reported 60 days in advance to the Senate and House Committees, and authorized either Committee within this time to disapprove such grants. President Eisenhower signed the bill, but entered a protest against this provision, and stated that the program

would not be carried out until the law had been amended to omit this objectionable feature. "Although the Congress may prescribe standards and conditions under which executive official may enter into contracts," he said, "it may not lodge in its committees or members the power to make such contracts either directly or by giving them the power to approve or disapprove a contract which an executive officer proposes to make."

The Act was amended at the next session of Congress by striking the provision objected to by the President and by adding another having exactly the same effect. Instead of authorizing the Senate or House committee to disapprove a small reclamation project, the amendment provides that no funds shall be appropriated for any project which either committee has disapproved (P.L. 47). Although this procedure is less objectionable than the earlier provision on constitutional grounds, it is administratively more objectionable, for it imposes excessive delays. The House Appropriations Committee has declined to vote funds for this purpose until individual projects are laid before the committees for the specified time, and which results usually in a delay of a year or more before funds can be secured. By the summer of 1958 only one project had been authorized and funds voted under this procedure.

3. Committee Veto through the Requirement of Advance Reports

Another legislative device which enables congressional committees to review proposed executive actions before they are taken is the requirement of advance reports, without granting the committees a veto power. Such reports are customarily required from 30 to 90 days before the action

may be taken, but under some acts the committees may reduce the waiting period by earlier approval of the proposed action. The effect of the requirement of advance reports is the same as though the committees were given a formal veto power. The advance reports put the committees on notice and enable them to inquire into proposed actions or plans. If the action is questioned by a member of the committee or its staff, or by other members of Congress, the department will usually be asked to supply additional information, and the committee may conduct hearings. If the committee objects to the proposed action, the departments invariably suspend action or modify the plans to meet the wishes of the committee.

The Case of Tax Refunds

The first act of Congress requiring advance reports of executive decisions, without authorizing the committee to exercise a veto power, appears to have been an appropriations rider of 1927, which provided that tax refunds in excess of $75,000 must be reported to the Joint Committee on Internal Revenue Taxation 60 days before being paid. This rider was passed as a result of criticisms and charges of irregularities in connection with the large refunds which were paid in the years following the First World War when Andrew Mellon was Secretary of the Treasury. The provision is still in effect after more than twenty years, although the act has been revised to reduce the waiting period to 30 days, and to increase the minimum tax refunds required to be reported to $100,000.

Not content with the requirement of advance reports, Senator McKellar of Tennessee introduced an amendment to a deficiency appropriation in 1933 to require all refunds in excess of $5,000 to be referred to the Joint

Committee for its determination of the amount to be paid. This amendment passed both Houses, though it was strongly opposed in the House by several members as a constitutional encroachment on executive functions. The bill was vetoed by President Hoover, who stated in his veto message that Congress could provide greater control over tax refunds by requiring additional auditing, but that it could not undertake executive functions. He submitted with his message an opinion of Attorney General Mitchell, who held that the provision was contrary to the constitutional principle of separation of powers, for it attempted to empower the legislative branch to exercise executive functions, "and it attempts to give a committee of the legislative branch power to approve or disapprove executive acts."[1]

1. Congressional Record, Vol. 76, pt. 3 (January 24, 1933), pp. 2445-46. See also 37 Opinions of the Attorney General (1933), p. 58.

The McKellar rider was not passed over the President's veto, but the earlier requirement of advance reporting of large tax refunds has continued in effect. The experience over a period of twenty years throws much light on the operation and effects of this form of legislative control. It shows, for one thing, that advance reports have exactly the same effect as the provision of a formal committee veto. It indicates the effects on administrative operations, and the role played by the congressional committee itself, and that played by its staff.

The total amount of tax refunds in excess of $100,000 runs about $250 million annually, though in some years it has been considerably higher. This is somewhat less than ten percent of the total tax refunds

paid annually. The number of tax refund cases examined by the Joint Committee staff averages about 250 annually. Some individual tax refunds have been as high as $100 million, and there are cases where the file is so voluminous that it occupies a dozen or more filing cabinets. The average tax refund case examined by the Committee involves a payment of about one million dollars, and the file of even the average case is voluminous.

The Joint Committee on Internal Revenuehas a special staff of four attorneys, who make a preaudit of each tax refund case in excess of $200,000. Their office is located in the Internal Revenue building. The Internal Revenue Service does not pay these refunds until each case is approved by the Joint Committee staff. If it has not completed the examination within the 30 days provided by law, payment is postponed until the examination is finished. The examiners is concerned primarily with whether the evidence in support of the application for a refund is in correct legal form, whether it supports the determination of the amount of refund due, and whether the decision is based upon a correct interpretation of the law. The Committee staff has established numerous requirements with regard to the form in which evidence must be presented (for example, requiring original copies of certain documents), and at times has challenged the interpretation of revenue laws by the Internal Revenue Service. In general, it has required more elaborate documentation of tax refund cases than is required for smaller refunds, or would be required by the service itself. These additional requirements have made it necessary to establish a special procedure for handling tax refund cases which

involve over $100,000, with additional internal checks and reviews, including a central review in Washington, to see to it that the file is complete and in correct form.

Tax refund cases originate in the district offices, where they are subject to several administrative reviews before they are submitted to the regional office. Tax refunds of over $100,000 are given two separate, independent reviews which are not ordinarily given to smaller refunds. One is conducted by an appellate division, which consists of high ranking civil servants who are skilled in tax cases; a second review is conducted by the Regional Counsel. After the case has been approved by these two divisions, it is certified to the central office in Washington, where it is given another review by the Tax Review Division in the Chief Counsel's office before it is submitted to the Joint Committee staff. A report is prepared on each case; refunds of less than a million dollars are prepared in the regional offices, while refunds of over a million dollars are prepared in Washington. [illegible] refunds, which are not examined by the Joint Committee staff, are handled in the district offices without such elaborate documentation, though several separate reviews are used, and the taxpayer has appeal rights to the regional office and to the central office in Washington, and also to the courts.

Any questions that may be raised by the Joint Committee staff in their review of tax refunds are ordinarily cleared directly with the Chief Counsel's office of the Internal Revenue Service, and requests for additional information are handled in this manner. In the large majority of cases questions raised by the staff are resolved after consultation

tion with the personnel of the Internal Revenue Service. In most cases the selection is dropped after a satisfactory explanation has been offered, but in other cases the Internal Revenue Service considers the points and reviews the determination of the amount of reformation. If an agreement is not reached, however, the Joint Committee staff submits the objections to the Chief of Staff of the Committee, the Joint Chairmen, and the Internal Revenue Service indicating a recommendation in support of the objections. At this stage the Chief of Staff usually arranges a hearing at which representatives of the Internal Revenue Service present arguments orally following which he renders a decision. Finally, if the Service is not satisfied with the decision of the Chief of Staff, it may appeal the case to the Joint Committee for its determination, but this rarely occurs. Once a period of three years passes, usually only a single refund case may be reviewed by the Committee. All other cases are disposed of by the Chief of Staff.

Several observations may be made concerning the operation and effectiveness of this examination [illegible] by the Joint Committee staff before they are voted. Since the decisions by the Chief of Staff are made by the agency [illegible] the Internal Revenue Service has binding effect and they are considered to be not public except on the order of a court of competent jurisdiction. It should be added, however, that no tax cases have been considered in recent years. Most taxpayers since the enactment of the revision have waived because of the objections of the Joint Committee staff. Because this arrangement provides an independent outside evaluation of large tax refunds, which might be necessary for a taxpayer to take [illegible] to handle such cases

with unusual care, including numerous checks and safeguards against careless or improper determination of the tax refunds due. It is stated by personnel of the Internal Revenue Service, as well as by members of the Joint Committee staff, that this results in large savings to the taxpayer, but there is no definite proof or disproof of such statements.

Third, the examination of large tax refunds by the staff gives the Joint Committee a valuable means of checking on the administration of the revenue laws, and especially on interpretation of the revenue laws by the Internal Revenue Service. Any interpretation questioned by the staff is laid before the Chief of Staff or the Joint Committee for their determination, thus enabling the Joint Committee and its staff to revise and pass upon the interpretation of revenue laws. Fourth, the procedure that is used in tax refund cases that are examined by the Joint Committee staff is administratively expensive and involves more internal checks, reviews, and much more voluminous files than would otherwise be required. It would be difficult to estimate, however, how much additional expense is involved, for in any event special procedures would be utilized for handling the very large tax refunds.

Fifth, expensive delays are involved in the settlement of tax refunds which are examined by the Joint Committee staff. In some cases settlement is delayed for several years, and on the average a year and a half is required. Since the government pays 6 percent interest when settlement is delayed, the annual interest charge is substantial. In the fiscal year ending June 30, 1955, the Joint Committee staff examined refunds and credits totaling $563 million, on which $16.6 million interest charges,

or 9 percent, was paid. During the same year other refunds totaled $2,490 million, and on these refunds only $15.5 million interest charges, or .6 percent, was paid. It must be noted, however, that the great bulk of small refunds are paid at once without being audited, and interest charges on the very large refunds, which necessarily have to be fully audited, would be at a substantially higher rate.

The delays in settling large tax refunds which are examined by the Joint Committee staff are not due so much to the time required by its examination as to the extra time required in preparing such cases, and to the several independent reviews that are used in the district, regional and Washington offices. When questions are raised by the Joint Committee staff, however, it is often necessary for such questions to be referred to the field, which involves further delays. In contrast, refunds that are settled on the spot by the district and regional offices can be handled promptly.

When advance approvals on large tax refunds were first required in 1927 there was evidence (or at least charges) indicating the need for greater checks and controls. This arrangement, including the examination of these refunds by the staff of the Joint Committee before they are paid, has continued unchanged, although in the meantime the Internal Revenue Service has instituted an effective system of internal audits and reviews which has reduced the need for an outside, independent examination. It is questionable whether today there is any need for every case to be examined by the Joint Committee staff. It may also be questioned whether the expensive procedures utilized in large tax refunds, and the costly

delays in settlement, are justified. Changes which would reduce the number of separate reviews and checks required in all cases, avoid the necessity for building such elaborate case records, and permit settlements to be made more promptly would bring about substantial savings in administrative costs and interest charges. The possibility of instituting such changes should be explored.

The present audit conducted by the staff of the Joint Committee does not meet the real needs for an independent audit of the administration of the revenue laws, which should be conducted by an agency responsible to the Congress. The present audit is limited to tax refunds, and only a small part of these refunds. The millions of tax decisions of the Internal Revenue Service in the collection of over $70 billion of revenue annually are subject to no outside, independent audit. Individual tax payments in some cases exceed $100 million. (The General Accounting Office does not audit individual tax cases and does not have authority to examine tax files, but makes an audit of the accounts and the handling of funds.) Beyond question some type of independent audit of tax determinations is needed. It should not be limited to the largest tax refunds, but should cover systematically, but on a sampling basis, all types of tax cases. Its purpose would be primarily to inquire into the adequacy and effectiveness of the internal audits and controls of the Internal Revenue Service, including: (1) whether all revenue due the government is being assessed, collected, and properly accounted for; (2) whether the laws are being interpreted correctly and in accordance with the intentions of Congress; (3) whether the administration is fair, competent, and

efficient; (4) whether adequate procedures and safeguards are utilized to protect against irregularities and frauds; and (5) what changes in law or administration are needed to avoid losses of revenue.

If the functions of the Joint Committee were enlarged to include a sampling audit of all tax decisions, as suggested, great care should be exercised to see to it that this audit does not hamper the administration of the revenue laws, or impose unnecessary red tape and elaborate procedures on the Internal Revenue Service. If it had this effect, as the audit of tax refunds has had, it would have the most serious effects. The government cannot afford to cripple the collection of revenues. Nothing should be done that would weaken the responsibility and accountability of the Internal Revenue Service and the Treasury Department for the administration of the revenue laws. For this reason, it is suggested that if the Joint Committee is authorized to audit tax decisions, it should conduct a postaudit instead of a preaudit. Also the requirement of advance reports on tax refunds of over $100,000 should be discontinued. A postaudit would have many advantages over a preaudit. It would avoid expensive delays; it would change the function of the staff from a controlling to a reporting agency; and it would bring to the Joint Committee itself for its determination any questions about the administration or interpretation of the revenue laws. A preaudit would necessarily weaken the accountability of the Internal Revenue Service, while a postaudit would enforce accountability.

Other Requirements of Advance Reports

Provisions have been included in legislation increasingly in recent years to require departments to submit advance reports on certain executive decisions before taking action, without authorizing the committees to veto the proposed action. A similar legislative provision is to require the departments to consult with the congressional committees prior to taking action, which clearly implies the power of disapproval. Such a provision was used in the 1944 act (cited above) authorizing the production of oil on naval reserves. Still another version is the requirement that the departments keep the congressional committees currently informed, which, in one case at least, has been interpreted to mean that certain plans or decisions must be reported in advance. The statutory requirement of reports on the disposal of surplus property by negotiation instead of advertised bidding was held by the committee to mean reports in advance, and the Administrator of General Services entered into an informal agreement with the committee that he would not dispose of surplus property in this manner to which the committee objected.[1] The requirement of advance or current reports

1. See William E. Rhodes, Committee Clearance of Administrative Decisions, p. 41.

is clearly intended to permit the committees to participate in executive decisions, and they have had this effect.

The Atomic Energy Commission, which is subject to close oversight of its affairs by the Joint Committee on Atomic Energy, is perhaps the

leading example of an agency that is required to make advance reports on various decisions, and, in fact, all aspects of its operations to a congressional committee. By means of these advance reports the Joint Committee is advised about the work of the Commission and is able to participate in important decisions. A key section of the original Atomic Energy Act of 1946 provided that the Commission must "keep the Joint Committee fully and currently informed with respect to the Commission's activities".[1] This requirement was strengthened in the 1954

1. Section 7 of the Act provided that whenever fissionable material or atomic energy had been developed to the point that they were of practical value for nonmilitary uses the Commission should submit a report to the President, recommending legislation to permit such use. This provision was attacked by David Lilienthal, after he had resigned as Chairman of the Commission, as "the most appalling reversal of our way of doing things in this country of which I have any knowledge. If such a veto of industrial development had been in the lawbooks when the locomotive was first developed, the outcry of its competitors, the stagecoach and the canal, might well have barred the progress of railroads." (Colliers, Vol. 126 (July 15, 1950), p. 68).

Act (68 Stat. 919) and extended to the Defense Department. The Committee's report on the 1954 bill stated that it is the "intent of Congress that the Joint Committee shall be informed while matters are pending, rather than after action has been taken".[2]

2. Quoted in Morgan Thomas, Atomic Energy and Congress (Ann Arbor, 1955) p. 153. The author has drawn heavily on this work in the following account,

Subsequent acts have required advance reports on a number of the most important actions of the Commission, including the sharing of secret information with other countries, plans for cooperative arrangements with other countries, the construction of demonstration reactors and other projects not previously approved by the Committee, the classification of "source materials" and "special materials", and regulations governing the disposal and price of nuclear materials for nongovernmental use. After the Dixon-Yates controversy, long term utility contracts for electric service at the Oak Ridge, Paducah, and Portsmouth installations were required to be submitted for a period of 30 days. In most cases a 45 day waiting period while Congress is in session is required before such decisions may take effect, but cooperative arrangements with other countries must be laid before the Committee for 60 days, and in this case disapproval by concurrent resolution is authorized (P.L. 85-479). These requirements of advance reports were passed over the Commission's objection that the requirement in the original Act to keep the Committee currently informed had the same effect.

As is common practice in other departments and agencies, the AEC must secure advance legislative authorization of the construction of new facilities, which is passed on by the Joint Committee before the authorization legislation is voted. Under the 1946 Atomic Energy Act the AEC was given an authorization in general terms, which covered land acquisition and construction of plant and facilities as well as programs, thus avoiding the necessity for individual authorization of new facilities. This unusual grant of authority was deemed necessary to provide needed

flexibility and prompt development of the program. In 1954 the Act was amended to require legislative authorization of plant construction and real property acquisition.

In view of the nature of the atomic energy program and its importance to the nation, and especially because of the uncertainties about future development in the early years of the program, it was to be expected that Congress would insist upon exercising close supervision over the politices and administration of the AEC. The Joint Committee was set up precisely for this purpose. It was impossible in the early years to foresee what kind of activities would need to be carried on and to authorize them in advance by statute. Without the close oversight exercised by the Joint Committee, Congress would not have been willing to delegate to the Commission the authority and flexibility necessary to the development of the program. The major task of the Joint Committee has been to act as the arm of Congress in formulating and proposing legislation authorizing new programs and establishing policies, which have been enacted into law. It has been essential for the Committee to keep in close touch with the work and plans of the AEC in order to formulate and pass upon needed legislation.

The experience since 1946, however, does not indicate that the close oversight of administration of the AEC which has been exercised by the Joint Committee should be copied in other activities. The Committee has made its greatest contribution in the development of policies and programs rather than in its supervision of administration. Its relations with the Commission on administrative matters has often produced friction and

frustration on both sides. The Commission has been placed in the unhappy situation of being subject to conflicting directions from the President and his Executive Office, on one hand, and the Joint Committee on the other. The administrative controls exercised by the Joint Committee, as, for example, its preoccupation with security measures, have often been negative and hampering rather than helpful and constructive. If the Commission is to be held responsible for its administration of the program in the future, it needs to be released from some of the detailed controls that have been exercised in the past.

A rider to the Interior Department appropriation act of July 31, 1955 (67 Stat 271) requires the Secretary of Interior to report 60 days in advance permits and contracts for concessions in the national parks to Congress/for referral to the appropriate committee -- the Committee 60 days in advance on Interior and Insular Affairs. The provision was not requested by the legislative committees, but was placed in the act by the House Appropriations Committee because of criticisms of former concession contracts. During the following three years 116 contracts and permits were reported to Congress; all were allowed to become effective without committee objection, and questions were raised in only a few cases. In 1956 the law was amended to require advance reports only of contracts involving a gross annual operation of $50,000, or extending for a period of five years or longer, and the waiting period was reduced to 30 days. During the next two years 12 contracts were reported and none was objected to by the committees.

The Federal Aviation Act of 1958 (P.L. 85-726), which established a new civilian agency to control air space and the location of civilian

and military airfields, provided that in the event of a disagreement between the armed services and the Administrator, the issue could be appealed to the Armed Services Committee for its decision. After objection was made to this provision by Senator Schoeppel because it would give the committees the power to pass upon an executive decision, the bill was amended to provide that appeals should be taken to the President for his determination, and that reports should be made to the congressional committees. "I do not believe it is a proper function of a legislative committee," stated Senator Bricker, "to have the power of veto over an administrative act. . . We have the responsibility of laying down the law; and Congress having once laid down the law, I think the administration ought to be in the hands of the executive department."[1]

1. Congressional Record, Vol. 104, 85 Cong., 2 sess. (July 14, 1958), p. 12436 (daily ed.).

Other statutes which require frequent and detailed reporting of specified administrative actions have about the same effects as the requirements of advance reports. For example, an act of 1953, which authorized the transfer of certain naval vessels to Italy, France, and other friendly nations, charged the Secretary of Defense to "keep the respective Committees on Armed Services of the Senate and the House of Representatives currently advised of all transfers and other dispositions" under the Act.[2] Recent acts creating "watch-dog" committees on Immigra-

2. 67 Stat. 363 (1953). For citation of numerous other acts of this kind, see J. Malcolm Smith and Cornelius P. Cotter, "Administrative Accountability: Reporting to Congress," Western Political Quarterly, Vol. 10 (1957) pp. 405-15.

tion and Nationality Policy, Defense Production, and Foreign Economic Cooperation require executive agencies to make reports to these committees and to consult with them at their request. Detailed reports (but not in advance) are often required to be made to the standing committees of Congress, or for referral to these committees, and provide a potentially effective means of influencing administrative decisions, if not actual control. Often such reports are required to be made at frequent intervals instead of annually. The subjects of the reports and the details required will usually indicate the nature of the concern of the committees. Although the committees rarely have the time or the staff to analyze these reports carefully and to make effective use of them, there is always the possibility that they will be examined, and department officers must act accordingly. A weakness of such reports is that they soon lose their effectiveness if little or no use is made of them, and, of course, they impose an added expense, which may be considerable.

Committee Review of Executive Action Without Statutory Authorization

In some instances executive actions are reviewed and approved or disapproved by congressional committees without specific statutory authority. One such instance recently reported in the press was of the action of the House Armed Services Committee in passing upon post exchange regulations of the Defense Department, approving some and disapproving others, although the authority to make such regulations is vested in the Department.[1] An example of the regulations considered by the

1. Washington Evening Star, July 31, 1957.

Committees was one relating to the sale of maternity dresses. In 1949

the Committee conducted lengthy hearings after complaints were made by retail merchants' associations, following which it issued a report with conclusions for the guidance of the Defense Department. The Committee directed that the merchandise offered for sale at the exchanges be curtailed, that stricter regulations be adopted concerning the persons who are permitted to use them, and specified that the exchanges should pay overhead charges and sales taxes. Chairman Vinson stated that the Committee expected the regulations to be revised in accordance with the report and threatened to pass a statute if necessary.

The Department accepted the conclusions of the Committee and amended its regulations accordingly. In 1953 the Committee conducted a second investigation because of further complaints, but after a short inquiry, concluded that the charges were "reckless", and issued a report defending the post exchanges as an essential part of the military program. In 1957 further investigations were conducted, and some post exchange regulations were disapproved by the Committee.[1] Unwilling to challenge the

1. U.S. House of Representatives. Armed Services Committee. Hearings... on Sundry Legislation Affecting the Naval and Military Establishments, 85 Cong. 1st Sess. (1957), pp. 3229-3399, 3413-25; Report on Armed Services Exchanges (PX's), 83 Cong. (1953); Hearings...on Sundry Legislation Affecting the Naval and Military Establishments, 81 Cong. (1949), pp. 3805-16, 3977-4002.

authority of the Committee, the Department has acquiesced in this Committee revision of its regulations and has put into effect the changes ordered by the Committee.

A similar case was the report of the House Committee on Merchant Marine and Fisheries issued in 1957 directing the Panama Canal Company to continue the operation of the railroad across the Isthmus. The Company decided in 1955 to abandon the railroad because of large operating deficits after the completion of a parallel highway connecting the ends of the Canal. Relying on the provision of the Panama Canal Act it may operate such a railroad, the Company believed that it had authority to abandon it. Learning of the decision, the Senate Appropriations Committee directed the Company in 1955 to take no action abandoning the railroad until the decision had been investigated and approved by the appropriate committees. The House Committee on Merchant Marine and Fisheries engaged a railroad expert to make a survey of the operations of the railroad and conducted hearings in 1955, at which representatives of the railroad unions strongly opposed abandonment. After concluding its hearings, the Committee issued an interim report in 1956 and a final report in 1957, in which it placed great stress on the importance of the railroad in the event of a national emergency and directed that it continue to be operated. The report recommended that the railroad rates be revised, that the Panama Canal Company and the armed services make greater use of the railroad instead of trucks and busses, and that various specified economies be put into effect.[1] The Committee took the position that legislation

1. Abandonment of the Panama Railroad, H. Doc. 297h, 84th Cong, 2nd Sess. (Jan. 3, 1957), pp. 9-10.

would be required to authorize abandonment of the railroad.

This case illustrates the different kinds of considerations which influence the decisions of executive officers and legislative committees. The reasons which had led the Company to decide to abandon the railroad -- the operating losses and the available highway and trucking facilities to meet local transportation needs -- evidently did not impress the Committee as sufficient to justify abandonment. On the other hand, the opposition of the railway unions evidently carried more weight with Committee than with the Company. The Panama Canal Company accepted the report of the Committee as a directive to continue the operation of the railroad. Although it put into effect the economies recommended, the railroad continues to operate at a substantial annual loss. In order to operate at a profit, it would be necessary for the armed services to use the railroad instead of their own trucks for the bulk of local shipments, which they have not seen fit to do.

Executive officers have on occasions entered into an informal agreement with a congressional committee not to take certain actions without consulting with the committee and securing its concurrence. For example, the Secretary of the Interior in 1956 entered into agreement with the House Committee on Merchant Marine and Fisheries not to make any withdrawals or other changes affecting wildlife refuges without consulting the Committee. This agreement was entered into in order to forestall legislation which would have required an act of Congress to withdraw land from wildlife refuges.[1] The Secretary of the Interior also entered

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1. U.S. House of Representatives, Committee on Merchant Marine and Fisheries, Report of Activities, 84 Cong. (1956), p. 6.

into an agreement with House Committee on Interior and Insular Affairs in 1956 not to make any further withdrawals of public lands for military use until Congress acted on a bill to require a Congressional enactment to authorize such withdrawals, which was enacted two years later.

The Constitutional Issue

Although the constitutional issue has not been tested in the courts, there is much authority to the effect that recent legislation authorizing congressional committees to pass upon proposed executive actions is contrary to the basic principle of separation of powers in the Constitution. Under this principle, which has been accepted throughout the history of the country, the power to make the laws is delegated to the legislative body, and the function of executing the laws is assigned to the executive branch. Each is confined to its own sphere, except as specifically provided otherwise in the Constitution. The President is granted certain legislative powers, especially the veto power, which was intended to protect him against legislative encroachment; and Congress was delegated certain executive functions, notably the confirmation of appointments, to restrain the Executive. But apart from the exceptions specifically authorized by the Constitution, the principle of separation of powers prohibits either branch from undertaking the functions of the other.

In an early case Chief Justice Marshall described the division of functions between the three major branches of government in the following words: "The difference between the departments undoubtedly is, that the legislative makes, the executive executes, and the judiciary construes the laws."[1] The leading case on the separation of powers in

1. Wayman v. Southard, 23 Wheat. 1,44 (1825).

Springer v. Philippine Islands, in which the Supreme Court held invalid an act of the Philippine legislature vesting the power to vote stock owned by the government in a commission consisting of the Governor General and the presiding officers of the two houses of the legislature.

> "Legislative power, as distinguished from executive power, is the authority to make the laws, but not to enforce them or to appoint agents charged with the duty of such enforcement. The latter are executive functions."[1]

1. 277 U.S. at p. 202.

The reasons for the separation of functions of the legislative and executive branches were cogently stated as follows by Woodrow Wilson in a veto message in 1920:

> The Congress and the executive should function within their respective spheres. Otherwise efficient and responsible management will be impossible and progress will be impeded by wasteful forces of disorganization and obstruction. The Congress has the right and power to grant or deny an appropriation, or to enact or refuse to enact a law; but once an appropriation is made or a law is passed, the appropriation should be administered or the law executed by the executive branch of the Government. In no other way can the Government be efficiently managed and responsibility definitely fixed.[2]

2. 59 Congressional Record, Vol. 59, pt. 7, pp. 7026-27.

There is, of course, no sharp or inflexible distinction between legislative and executive functions; inevitably one shades into the other, and there is a middle ground which may be performed by either branch. Many decisions which formerly were the subject of law are today delegated to executive officers and agencies under standards and policies fixed by law. This trend is inevitable because of the vast expansion of governmental functions and the increasingly technical nature of public activities. Nevertheless, it cannot be doubted that there is a basic distinction between legislative and executive functions. A distinguishing characteristic of the legislative function is that of generality; the legislature enacts laws which establish new policies, authorize new programs, and prescribe general standards and rules, while the distinguishing characteristic of the executive function is the application of laws to individual cases. The letting of contracts, the acquisition or sale of real estate, the granting of permits and concessions in the national parks, the fixing of prices of fissionable materials, and similar acts are undoubtedly executive functions under the Constitution. It would hardly be contended that such activities may be assigned to congressional committees.

The action of congressional committees in passing upon proposed executive actions before they are put into effect, approving or disapproving them, is indistinguishable in principle from the assignment of the function directly to the committees. They participate in the decisions and make the final determinations. The role which they play is essentially the same as that of executive officers who pass upon the

recommendations of subordinates. With the power to approve or disapprove a decision, they can insist upon being consulted ahead of time, and their wishes will be paramount. As has been stated repeated by leading members of Congress in debates on the issue, the committee veto of executive plans and decisions is an unconstitutional encroachment on executive functions.

The committee veto is also subject to the objection that it deprives the President of his veto power. All actions of Congress having legislative effect must be passed by both Houses and submitted to the President for his signature. Congress cannot delegate authority to one House to take action having the effect of law, much less to committees, which are not recognized in the Constitution.

Although it is generally conceded today that the "coming into agreement" requirement is constitutionally objectionable, it is contended that Congress may accomplish the same result by providing by law that no funds may be appropriated for specified purposes or projects until the department plans have been approved by the appropriate congressional committees. It is said that this latter provision merely revises the rules by which Congress authorizes appropriations, and hence does not encroach on executive functions. The fallacy of this contention is apparent. Congress authorizes appropriations by legislation, which must be passed by both houses and submitted to the President for his signature. It cannot delegate this function to one House or to committees. It may authorize individual public works projects or it may enact general authorization legislation, but if it enacts a general law, it

cannot constitutionally delegate the authorization of individual projects to congressional committees. This is what the lease-land device attempts to do by tying the committee veto to the authorization process. Congress must exercise its powers in the manner prescribed by the Constitution. It cannot legitimatize committee encroachment on executive functions by changing its rules.

Conclusions

It is significant that the "coming into agreement" requirement, or the committee veto, was initially used as an alternative procedure in the place of statutory authorization of public works projects during the Second World War. By requiring Navy land acquisitions and disposals to be approved by the Naval Affairs Committees, these Committees were authorized to make the final determination of the location of new naval facilities. This procedure has been extended to all real estate transactions of over $25,000 by the armed services, to the acquisition of public buildings by lease-purchase contracts (an alternative method to authorization by statute), to atomic energy acquisitions of land and plants not previously authorized, and to grants to local authorities for watershed conservation projects and small reclamation projects. It will be noted that all of these acts involve public works projects. The "coming into agreement" requirement enables the congressional committees to pass upon the projects prior to construction, particularly with reference to location. The committee veto has also been extended to other executive decisions, but its major use continues to be for the authorization of public works projects.

In defense of the "coming into agreement" procedure, it may be pointed out that it provides greater flexibility and more prompt decisions than statutory authorizations and provides the committees with about the same control. On the other hand, it deprives the two Houses of Congress of final authority. The committees act on behalf of Congress, but do not have to submit their decisions in the form of authorization bills to Congress for its action and possible amendment. The procedure strengthens the authority of the committees not only vis-a-vis the executive departments, but also with respect to other members of Congress, who have no appeal from the decisions of the committees. It also deprives the President of his veto power over construction authorizations. It may be contended that the President does not need the veto, for presumably he has approved the projects before they are submitted to the committees for approval, but this is not always true.

The committee veto of real estate transactions of the armed services applies to certain executive decisions which are not controlled by construction authorization legislation, and hence increases the control of the congressional committees. All real estate transactions involving more than $25,000, including not only acquisitions, but also disposals and rentals require the approval of the Armed Services Committees. This enables them to pass upon the disposal or closing of facilities, as well as the location of new facilities. The Committees also pass upon specific contracts involved in real estate transactions, which is not the practice under statutory public works authorization.

The objections to the "coming into agreement" procedure with respect to the real estate transactions were cogently stated by President Truman

and President Eisenhower in their veto messages. It centralizes in Washington many decisions that ought to be delegated to field officials, increases red tape, requires numerous reports, and imposes serious delays. As reported by the second Hoover Commission, it prevents the efficient management of the huge real property holdings of the armed services. Another effect of the committee veto of public works projects is to increse the political pressures on administrators. The committees which exercise the veto usually follow the practice of referring local projects to the Congressman or to the Senators from the state, and follow their advice. This procedure in effect delegates the veto power to individual members of Congress and gives them an added sanction in their dealings with the executive departments.

Little use of the committee veto has been made apart from public works projects. It was used for a year with regard to the termination of commercial type enterprises in the armed services and transfer of these activities to private enterprise, but was not continued. Advance reports of executive decisions are extensively required of the Atomic Energy Commission, coupled in some instances with the legislative veto by resolution. This usage has much to commend it in this activity, especially with respect to cooperative arrangements and the sharing of secrets with other countries. Without some provision of this kind, Congress would not have been willing to sanction such arrangements.

Some general observations may be made with respect to the operation and effects of the committee veto, irrespective of the kind of activity involved. The committee veto increases the control of congressional

committees over the departments by permitting them to pass upon, and approve or disapprove proposed executive decisions before they are put into effect. The effect is not only to divide responsibility between the executive officers in charge and congressional committees, but also to enable the committees to participate in decision making and to share in the direction and supervision of the departments. The result of this arrangement inevitably is to weaken the authority of the department heads and to impair the internal management of the departments. It cannot be doubted that the committee veto likewise encroaches on the executive functions and responsibility of the President.

A serious objection to the committee veto is that it prevents Congress from holding executive officers responsible for the conduct of their agencies. As Representative Holifield so well stated in a debate on the committee veto: "The surest way to destroy responsibility and accountability in the administration is to make a committee of Congress a party to each and every administrative act of importance." Executive officers often embrace congressional review and advance approval, thereby escaping responsibility.[1]

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1. An interesting illustration of this point occurred during the Revolutionary War. The British government, having a large majority in Parliament, resorted to the device of securing advance legislative approval for unpopular measures and thereby escaped responsibility for bungling the war. Bishop Watson summed up the practice when he wrote: "The mischief of the American war was carried on under the sanction of parliament, and every other mischief will be carried on in the same way:

for a minister would want common sense to run any risk in taking on himself responsibility for obnoxious measures, when he could secure the consent of parliament to almost any measure he might propose." Anecdotes in the Life of Richard Watson (London, 1817), p. 84.

The requirement of advance reporting and committee approval of proposed executive decisions may occasionally provide a useful safeguard against ill-considered or hasty action, but in the long run this advantage will be outweighed by its harmful effects on administration. It will not encourage executive officers to accept responsibility, to seek new and improved methods, or stimulate them to take calculated risks and introduce needed innovations. On the contrary, it will make them unduly cautious, impose added checks and delays, and lessen efficiency. The committee veto causes administrators to defer to the wishes of the congressional committee instead of accepting responsibility for their decisions. Subordinates often justify questionable decisions or proposals on the ground that they are desired by the committee.

Because of the pressure of other work, congressional committees are seldom able to give careful consideration to proposed executive actions submitted to them for approval. Unless an objection is made, ordinarily proposed actions are routinely approved with little consideration. At this stage a legislative committee is under a considerable handicap in passing on executive decisions, for only persons who are in constant touch with department administration are in a position to judge the wisdom of the proposed action. In some instances the

requirement of advance reporting and committee approval has placed an impossible task on the committees, requiring them to act upon hundreds of individual cases. At least two committees have found it necessary to amend the statutes so that only the larger transactions will be reported to them. In one instance the committees of Congress were asked to pass upon the rental of garage space to a military officer for one car at the rate of $5 per month. If a large volume of transactions are passed upon by congressional committees, they are forced to rely largely upon their staffs to conduct the examination, as is true of tax refund cases. Legislative control through the committee veto then turns out to be largely a staff control rather than a committee control. The result is to substitute decision making by the legislative bureaucracy, which cannot be held responsible, for decision making by an executive bureaucracy, which can be.

In contrast to the formal requirement of committee approval of executive decisions, the requirement of advance reports without the committee veto appears superficially to be much less objectionable. It enables the committees with the aid of their staffs to make suitable inquiries before actions are put into effect, and, if necessary, to recommend legislation to modify or to veto the proposed action. The effect, however, is the same as the legal requirement of committee approval, for executive officers invariably accede to the wishes of congressional committees, and withdraw decisions to which objection has been made. Advance reports thus provide the means whereby committees may participate in executive decisions and assures that they will be

constantly "looking over the shoulders" of administrative officers. Its effects at best make administrative officers excessively cautious and sensitive to congressional pressures; at the worst it slows down administrative operations, leads to red tape and excessive centralization, and dissipates responsibility.[1]

1. The delays that may be caused by congressional committee review of executive actions is well illustrated by the audit of large tax refunds conduct d by the staff of the Joint Committee on Internal Revenue Taxation, recounted above. Another example was brought out in an investigation conducted during the Korean war to ascertain the causes of excessive delays in letting contracts for military equipment and supplies. It was discovered that an important cause of the delays was the excessive caution taken by the procurement officers after the Chairman of the House Armed Services Committee directed that all contracts above a specified amount be reported to the Committee for examination. Although reports were not required until after the contracts were let, the procurement officers were unwilling to approve the contracts until every possible precaution had been taken to assure that they were in correct form. As a result, months of delay occurred in the procurement of military supplies at a critical period.

There are other reasons why congressional committees should not claim the right to share in executive decision making. Members of Congress cannot have the detailed knowledge of department operations which

is needed in passing on executive decisions before they are put into effect. The heads of departments and agencies have the knowledge which comes from daily contact with administrative operations and problems, and can draw upon the experience and judgment of career administrators in a manner which is not available to legislative committees. Decisions which come to them for approval are based on extensive staff work utilizing the resources and staff of a large organization. The affairs of a department will be well managed only if executive decisions are made by the executive officers in charge. The considerations which affect the decision of the responsible executive officers are quite different from those which influence a member of Congress. The department head must consider the various and often competing interests of the nation as a whole, while the member of Congress will understandably give primary attention to the interests of his own district or state. The department head must also consider how each decision or plan affects the program of the President, the policies and activities of other departments, as well as our foreign policy and relations with other countries, and the complex administrative problems involved. The Congressman is under no such obligation and is free to disregard these considerations. The greatest difference lies, however, in the fact that the department head is publicly responsible for the policies and administration of his department, while congressional committees cannot be held responsible for the effects which their decisions may have upon administration.

The proper function of congressional committees is not to make or pass upon executive decisions before they are put into effect, but (1) to study, prepare, and recommend needed legislation, and (2) to check on the administration of the departments in order to hold the executive officers accountable. Congressional committees have more important work to perform than to attempt to pass upon day-to-day executive decisions.

THE WARREN COURT AND THE EXECUTIVE BRANCH

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Since the appointment of Chief Justice Earl Warren two appraisals of Presidential power today have received unusually wide attention. Professor Clinton Rossiter concluded in The American Presidency that "the outstanding feature of American constitutional development has been the growth of the power and prestige of the Presidency" and predicted a continuation of that development. Mr. Walter Lippmann in The Public Philosophy declared that the "power of the executive has become enfeebled, often to the verge of impotence" and attributed "the democratic disaster of the twentieth century" to this "derangement of powers." The fact that two such eminent publicists and scholars, presumably examining essentially the same phenomena, could arrive at diametrically opposed opinions on the state of the Presidency today suggests some of the difficulties inherent in any effort to assess the effects of the Warren Court's decisions upon the Executive.

Some of the other difficulties which urge caution upon an analyst deserve mention. Neither Mr. Lippmann nor Professor Rossiter suggests that the courts have had a leading role in shaping the contemporary Presidency, whether for better or for worse. Of course major studies of the office, and of the relations of the executive and judicial branches cast doubt on any notion that the courts have ever played such a part, now or in the past.[1]

Great as the powers of the American Executive may be, moreover, most of them are exercised pursuant to statute or at least with regard for implicit or explicit expressions of Congressional intent. At the same time executive officers possess broad discretion in statutory interpretation. Taken together these two facts make it clear that many cases involve the relations of the Court with both the other two branches, not simply with one of them. Yet to examine every case in which the validity of executive action under claimed statutory powers was challenged would carry us so far beyond our subject that we should lose sight of it. Some choice must be made, and the admittedly rough criterion of choice employed here is the amplitude of discretion left with executive authorities. One important case in the Warren Court must serve to illustrate resultant exclusions. In form the decision in United States ex rel. Toth v. Quarles[2] directed the then Secretary of the Air Force to release from custody a civilian who after being honorably discharged from the service had been arrested by military authorities and returned from the United States to Korea to stand trial by court-martial for the murder of a Korean he was alleged to have killed while in service there. But Congress had provided in an article of the Uniform Code of Military Justice, against the advice of the Judge Advocate General of the Army, for the action taken by the executive. The only discretion left to the military authorities, if it can properly be called that at all, was either to proceed as they had or to do nothing. In such a case

the onus of transgression of constitutional bounds properly lies on Congress rather than the President or those who act for him.[3]

It is obvious also that the President, or even the chief executive plus those of his subordinates who may be called the great officers of state, is not synonymous with the executive branch of the government of the United States. Wherever we place the "independent commissions," there is still a myriad of agencies and officials to whom Congress has by law committed more and less important types of executive authority, whatever the ultimate responsibility of the President under his constitutional directive to "take care that the Laws be faithfully executed" may be. And if the President were not to rely completely upon the good faith and good judgment of others to make in his name countless decisions that the statutes in terms direct him to make, he would have no time for the important business of his office. Many decisions of the Supreme Court deal with the fairly routine exercise of these powers by bureaucratic components of the executive branch. In their sum these decisions have an important bearing on the executive branch. But the day is past when they are generally argued, let alone decided, as constitutional questions. Such cases in the Warren Court are omitted here, regardless of their cumulative importance for administrative, as distinguished from constitutional, law.

Finally it must be remembered that although the business of the Supreme Court is largely of its own choosing, it is not of its own making. Questions of executive power must be raised by litigants if they are to be tried at all. The consequence is that the impact of judicial decision upon the executive is discrete although not entirely haphazard. The record of the Warren Court to date rests on only six annual terms. The statistical universe of its major decisions on executive power is much too small to permit that statistical elegance of which this writer is incapable were it attainable. Willy-nilly, to be other than impressionistic here is to indulge in "delusive exactness." But even if one thinks dramatically rather than statistically, its decisions on executive power are not the most controversial and exciting aspect of the Warren Court's work. Fortune has not brought it a case in this area which compares with the Steel Seizure case[4] in the Vinson Court, nor with its own action in Brown v. Board of Education of Topeka.[5] Yet it has been adding to what Mr. Justice Frankfurter has called the "coral reef of constitutional law" on executive power.

A baker's dozen of opinions concern us, but two[6] of these thirteen deal with the same question, in which on reargument the Court vacated the decision arrived at in its first opinion and decided the issue the other way. Thus an even dozen opinions[7] represent ultimate decisions of the Court. The Court was unanimous in only four[8] of the twelve, and in one[9] of these four it is quite likely that only Mr. Justice Clark's nonparticipation kept it so. Two of the cases were disposed of by per curiam opinions[10] despite their importance, and in one[11] of the two a dissenting opinion was filed. All twelve the Court took from lower federal courts at its own discretion under its certiorari jurisdiction. Perhaps more interesting is the simple statistic that in only one case[12] did the Supreme Court affirm a lower court's decision (and on quite different grounds) and in another opinion,[13] in which two cases were consolidated for decision, one of the two opposing decisions below was affirmed. It is this kind of record of reversals on certiorari which entitles us to be skeptical of protestations that denial of petitions for certiorari

carries no intimation of opinion on the merits. One other statistic is startling, expecially when seen in conjunction with these others. The government won only two[14] of these twelve cases. And one[15] of these two is more properly described as a draw on the important constitutional issue of executive power presented. Clearly the Warren Court is no rubber stamp for the Executive. Just as clearly a majority of the Warren Court has been less sympathetic to claims of executive authority than the lower federal courts.

The cases fall into two broad categories of questions. The removal power of the executive is the over-arching constitutional problem in seven cases,[16] all of which the government lost. All but one[17] of the seven concern dismissals resulting from loyalty-security programs of the national government. Expressed in the broadest terms, the other constitutional issue is the President's power over the conduct of foreign relations. But of the five cases in this area, three[18] are concerned with the President's authority to make executive agreements with foreign nations, and two[19] with executive power to limit through passport control the travel of American citizens abroad. Thus the Warren Court's concern with powers of the executive branch reflects the country's struggles in the Cold War.

I. THE REMOVAL POWER

Of the seven cases (plus an eighth which was declared moot) on the removal power only one involves a removal by the President. Four more arose out of removals by other executive officers of employees in the executive branch. The remaining two cases break new ground, one dealing with the type of discharge papers which the military services may issue and the other with the loss of private employment as a consequence of security regulations. A majority of the Supreme Court has not yet upheld the dismissal of a single person by the national government on loyalty-security grounds.[20]

So much has been written about the civil liberties issues in these loyalty, security cases by the Justices and others that it is easy to forget that they are, after all, removal power cases. In considering questions about the removal power which they present, it is necessary to avoid the temptation to dwell upon civil liberties issues yet not to distort analysis by forgetting they are present. We can do so by keeping two facts in mind. First, either the President or Congress, and sometimes both, have repeatedly authorized and prescribed removal of those found to be loyalty or security risks. Second, the Supreme Court in passing upon such removals has never intimated that the establishment of such grounds for removal is unconstitutional; rather, it has repeatedly assumed the contrary. There can be no dispute about what "is," in these two respects, and for present purposes, there need be none about what "ought to be."

It will help keep the loyalty-security removal cases in perspective by considering first the one removal case in the Warren Court which is not a loyalty-security case, for the constitutional theory and the conception of executive power found therein also pervade and condition, if they do not determine, the loyalty-security cases. In Wiener v. U.S.[21] a member of the War Claims Commission sued to recover his salary after his removal by President Eisenhower because the President regarded it "as in the national interest" to

have "personnel of my own selection" on the Commission. In less exalted language, the President thought the office was a patronage position and intended to treat it as such. And why not? In establishing the Commission Congress had been completely silent about removal, although the Rathbun case indicated that if Congress authorized the President to remove members for specified causes, a removal for any other reason would be held contrary to its intent. Congress, the President might fairly infer, had regarded the office just as he did. Indeed, if further circumstantial evidence of Congressional intent were needed, there was the fact that Congress had not required a bi-partisan composition for the Commission. Therefore why should not plum sauce for surfeited Democrats be plum sauce for famished Republicans?

But the Supreme Court held in a unanimous decision and brief opinion that the President had drawn the wrong inference, without even mentioning what it was or why he might reasonably have drawn it. Mr. Justice Frankfurter conceded that "this is a problem in probabilities." But he concluded that "the most reliable factor for drawing an inference . . . is the nature of the function that Congress vested in the . . . Commission." That function was to "adjudicate according to law" the claims before it. Congress might have given this work to the regular federal courts, whose decisions it would certainly be improper for the President to try to influence. It would be as bad for the President to attempt to influence a decision of this Commission, and "a fortiori must it be inferred that Congress did not wish to have hang over the Commission the Damocles' sword of removal by the President for no reason other than that he preferred . . . men of his own choosing." "No such power is given to the President directly by the Constitution, and none is impliedly conferred upon him by statute simply because Congress said nothing about it."

Adverse criticism of the opinion may point to its admission that Congress might have exercised this function itself or vested it in an officer of the executive branch subject to the removal power of the President. (Indeed, Congress did consider giving part of the task to the Federal Security Administrator.) A sufficient answer to this is that weight ought to be given to the fact that Congress did not choose to place settlement of these claims in hands so open to political influence.

But if "the nature of the function" performed by the officer is the criterion for testing a claim of inherent Presidential removal power, of course many executive officers including Cabinet Secretaries heretofore considered subject to removal at the pleasure of the President also perform quasi-judicial functions. Will such duties be held in future to immunize them from summary removal? There is no reason to suppose so. But that is not to say that removal of such an officer solely because he refused to render a quasi-judicial decision entrusted to him according to a President's desire would be legitimate. Nor should the Court prospectively approve such a removal in obiter dicta. The question left open by this criterion of "function" thus seems to be more of a dialectical resource for those who are determined to find fault with the case than a practical danger to effective Presidential control of anything he is entitled to control or ought to want to control.

A more serious question left unsettled is whether the President has power, absent statutory authorization, to remove an officer performing such a function whom he believes guilty of crime or improper conduct. The Court probably had

in mind Mr. Mack of the Federal Communications Commission, who resigned and thus deprived the President of the adventure of seeking an answer to this question, when it observed that here was no "removal for cause involving the rectitude of a member of an adjudicatory body, nor even a suspensory removal until the Senate could act upon it by confirming the appointment of a new Commissioner or otherwise dealing with the matter." But if "no such power is given to the President directly by the Constitution, and none is impliedly conferred on him by statute simply because Congress said nothing about it" in Commissioner Wiener's case, how, some will insist, could it have been different in Commissioner Mack's case? The short answer to this objection is that two such cases can be different because the Court can make them different, and that it will if it considers wise public policy requires differentiation. Those shocked by such an answer should remember that the whole idea of an inherent power of removal is only a convenient fiction which had to be invented because the Framers were as silent in the Constitution as Congress was in the War Claims Act.

Of the four cases of removal of federal employees on loyalty-security charges, the Peters case and the Service case are relatively minor in importance, although they were the ones treated as causes celebres by the press, probably because they involved persons of prominence or notoriety in contrast to the obscure civil servants concerned in the two more important cases. Peters v. Hobby[22] was the first of these cases decided by the Warren Court, and provoked the greatest division among its members. The holding of the Court, announced in an opinion by the Chief Justice, is unusual in that not only the Department of Justice and able counsel for Doctor Peters, and the lower federal courts, and Justices Reed and Burton dissenting, but also Mr. Justice Douglas concurring agreed that the procedure which the Court found unauthorized and therefore invalid was authorized.

Doctor Peters's principal constitutional contention had been that the use of secret evidence from unidentified informants who cannot be confronted and cross-examined invalidates such proceedings. It is not strange that it was not upheld; the Court had once before been unwilling and has twice since failed to do so. Some of the severest and most thoughtful critics of the federal loyalty-security programs have agreed that in some circumstances the use of secret evidence and informants is justified.[23] But one must surmise that a majority of the Court were not prepared to deny Doctor Peters's contention either.

After Doctor Peters had been cleared without a hearing by the loyalty board of the Federal Security Agency the President's Loyalty Review Board had on its own motion reviewed his case and recommended that the agency board hold a hearing. The Agency complied, but the result of its hearing was a renewed clearance. The Loyalty Review Board thereupon determined again on its own motion to hold a hearing of its own, which resulted in a finding adverse to Doctor Peters and a direction for his dismissal. Executive Order 9835 provided that "The Board shall have authority to review cases involving persons recommended for dismissal . . . . Such cases may be referred to the Board either by the employing . . . agency, or by the officer or employee involved." Indisputably, Doctor Peters had not been recommended for dismissal by the agency board, nor had his case been referred to the President's Loyalty Review Board by himself or his agency. On two counts the Court held the Review Board

had thus exceeded the authority delegated to it by the President.

The main question about this holding stems from another power delegated to the Review Board by the President, to wit: "The Board shall make rules and regulations, not inconsistent with the provisions of this order, deemed necessary to implement statutes and Executive Orders relating to employee loyalty." The procedure of the Review Board in this case followed a regulation it had promulgated for "post-audits" of agency boards' actions. Just as indisputably there was nothing in the Executive Order which explicitly forbade the Board to adopt that regulation. And the post-audit regulation, as the dissent pointed out, had been adopted at the beginning of the program and action under it had five times been formally reported to the President, who in amending Order 9835 by Order 10241 left post-audits undisturbed. Was it nevertheless inconsistent with the provisions of the Order? Reasonable men not only might, they did disagree.

Before the case was decided President Truman's Order had already been revoked by President Eisenhower in Executive Order 10450. Under it the Peters case could not have arisen, nor can such cases in the future. In that light the most lasting significance of the case for executive power may well be an observation made by Mr. Justice Reed in his dissent:[24]

> The Court in this case is reviewing a Presidential Order and rules made thereunder. I do not find it as easy as does the majority to analogize such review to judicial review of congressional Acts and administrative interpretation of such Acts. Certain differences are immediately apparent. The Executive Branch is traditionally free to handle its internal problems of administration in its own way. The legality of judicial review of such intra-executive operations as this is, for me, not completely free from doubt.

Of course one can reply that these "intra-executive operations" affected important private rights. But so do countless others which have nothing to do with loyalty-security programs. Would the extension to them of the type and scope of review employed in the Peters case advance the rule of law, or would it be an insupportable obstacle to effective administration?

The administrative procedures in Service v. Dulles[25] were even more long drawn out than in the Peters case. Before he was finally fired by Secretary Acheson Mr. Service had thrice been cleared by the State Department's loyalty board, the second two times after hearings and findings approved by the Deputy Under Secretary. Three times the President's Loyalty Review Board had conducted "post-audits"; twice it had ordered new hearings by the departmental board, and the last time it had held its own hearing, which resulted in a decision adverse to Service. Of course under the holding of the Peters case all these proceedings after the first clearance by the State Department Board were void and were alleged to make his dismissal also invalid. The statement in Mr. Justice Harlan's opinion for a unanimous Court (Mr. Justice Clark not participating) that "we do not reach" this contention is therefore curious, on first impression.

But in the Service case the action of the Secretary did not rest alone

upon a delegation under President Truman's Loyalty Order. Congress had enacted and repeatedly reenacted the so-called McCarran Rider, which provided that

> Notwithstanding the provisions of any other law, the Secretary of State may, in his absolute discretion, . . . terminate the employment of any officer or employee of the Department of State or of the Foreign Service of the United States whenever he shall deem such termination necessary or advisable in the interests of the United States. . . .

In an affidavit concerning his dismissal of Service Secretary Acheson stated that he had acted under the powers conferred on him by both the Presidential Order and this statute. But the Court found that only the McCarran Rider's language "Notwithstanding the provisions of any other law" could serve as a basis for the dismissal without a hearing before the Board of Foreign Service, which was otherwise required by law. Thus the reason for not resting the decision on the precedent of the Peters case becomes clear.

The Department of State had promulgated regulations detailing the procedures to be followed in loyalty-security cases which were made applicable to action under the McCarran Rider as well as under the Executive Order, and which had been appropriately reported to Congress. Under a regulation adopted in 1949, as the Court paraphrased it, "the Action of the Deputy Under Secretary, if favorable to the employee, was to be final, the Secretary reserving to himself power to act further only if his deputy's action was unfavorable to the employee." A regulation adopted in 1951 provided that a decision for removal should "be reached after consideration of the complete file, arguments, briefs, and testimony presented." Secretary Acheson had deposed that he "made no independent judgment on the record in this case" because he "deemed it appropriate and advisable to act on the basis of the finding and opinion of the Loyalty Review Board." Thus neither of the two regulations, whichever was applicable, had been followed.

But the decisive question was whether or not the Secretary was bound to follow them in exercising "his absolute discretion" under the McCarran Rider. The Court, citing United States ex rel. Accardi v. Shaughnessy,[26] held that he was.

The Service case is full of ironies. From the point of view of human and political interest it is difficult to say which of the two--the finding that former Secretary Acheson had acted illicitly or the discretion to the late Secretary Dulles to make restitution--is the more delicious.

From the standpoint of precedent some irony lurks in the Court's reliance on the first Accardi case without reference to the practical reduction of the sweeping rhetoric of that opinion to shambles in the second Accardi case.[27] Especially is this so when one considers the different composition of the majorities in the two cases.

Then there is the ironical contrast with the Peters case, in which Presidential knowledge of administrative rules and practice under his order was deemed insufficient to support an inference of Presidential approval and

adoption. Yet in the Service case Congressional reenactment of the McCarran Rider with knowledge of departmental regulations was held equivalent to legislative adoption.

Considering the phraseology of this statute, the irony becomes almost comic. If Congress intended to approve regulations limiting the Secretary's discretion and bind him to these limitations in future, language continuing to vest in him "absolute discretion" is a strange choice of words in which to manifest that intent. But there is more, although the point is not discussed in the opinion. Congress gave the Secretary this discretion "notwithstanding any other provision of law." Surely the departmental regulations, if they were legally binding, as they were held to be, were in this sense "law." Therefore one must try to understand that, despite this language, what Congress really meant was that the Secretary had absolute discretion "notwithstanding any other provision of law except such provisions of law as he has promulgated."

The decision in Cole v. Young[28] has more general application, although a limited practical effect.[29] While President Truman's loyalty-security program under Executive Order 9835 was in effect Congress in 1950 passed an act which "notwithstanding any other law" authorized the heads of eleven sensitive agencies "in their absolute discretion" to suspend without pay "any civilian officer or employee" and after notice to an employee with an opportunity to reply, and "such investigation and review as he deems necessary to terminate the employment . . . in the interest of the national security of the United States. . . ." The act also provided that the President could extend these provisions to any other agency when he deemed it "necessary in the best interests of national security." By Executive Order 10450 President Eisenhower brought the entire executive branch under the act.

Subsequently Mr. Cole, a pure food and drug inspector in the Department of Health, Education and Welfare, was dismissed under this authority. In an opinion of the Court less tortuous than those in the Peters and Service cases Mr. Justice Harlan held the dismissal void. From his examination of the act's legislative history and relation to the Truman program he demonstrated more convincingly than the dissenters were able to argue to the contrary that despite its sweepingly literal language Congress had intended the act to cover only those employees in sensitive positions within sensitive agencies, at least outside the agencies explicitly included in the statute. Secretary Hobby had not found that Cole's position fell into that category for she had no reason to believe she was required to under the President's order. Avoiding an outright declaration that the President as well as the Secretary had acted illegally, the Court assumed "for purposes of this decision" that the act had been validly extended to the department, although the dissent aptly noted that "the reasoning of the opinion makes that extension a fortiori unauthorized."

In his dissenting opinion Mr. Justice Clark exposed two major constitutional issues which the Court succeeded in ignoring only by its rather fictitious assumption, for by striking down the President's extension the Court would raise

a question as to the constitutional power of the President to

> authorize dismissal of executive employees whose further employment he believes to be inconsistent with national security. This power might arise from the grant of executive power in Article II of the Constitution, and not from Congress.

Should the inherent removal power of the President be interpreted to sanction dismissals for this reason and in this manner? The Wiener case perhaps hints the Warren Court doubts that it should be. But assuming that it should be, and that Congress intended to limit such inherent power by this law, can it do so constitutionally? Probably the majority would quote Justice Jackson's statement in the Steel Seizure case:

> When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

But was the Court justified in being so cautious in the Cole case as not to scrutinize the question at all?

Vitarelli v. Seaton,[31] the fourth of the Warren Court's federal employee loyalty-security cases, was decided June 1, 1959. Mr. Justice Harlan's opinion for the Court (which was unanimous on the important questions) is refreshingly straightforward. Dr. Vitarelli was a Schedule A employee of the Department of the Interior working as an Education and Training Specialist, and therefore could be dismissed at any time by the Secretary without giving any reason. Instead he was served with charges in 1954 and had a hearing before the departmental security board, after which he was dismissed "in the interest of national security." Over two years later, while the case was pending in the District Court (and four months after the Cole decision), the Department issued a new document, bearing the original's date, purporting to revise and replace it, and omitting mention of any reason for dismissal. The Department's theory was that it thus retroactively fired Vitarelli for non-security reasons and mooted the case. Four members of the Court, dissenting from the Court's refusal to adopt this theory, agreed that "this is the common sense of it," but it is a democratic axiom that a minority does not have a monopoly on common sense.

Although the proceedings had been taken under the same authority as in Cole's case, and Vitarelli's position had not been found sensitive either, the Court did not rely on its prior decision, presumably because Vitarelli, unlike Cole, had no other statutory protection. It found bigger game to shoot at, even though it again declined to decide on constitutional grounds. The department had promulgated procedural regulations for its security cases, and citing the Service case, the Court held it was bound to follow them.

In three important respects it had violated them. The regulations

required

> that the statement of charges . . . "shall be as specific and detailed as security considerations, including the need for protection of confidential sources of information, permit * * *" petitioner was questioned by the security officer and by the hearing board in great detail concerning his association with and knowledge of various persons and organizations nowhere mentioned in the statement of charges, . . . and the very fact that they were asked and thus spread on the record is conclusive indication that "security considerations" could not have justified the omission of any statement concerning them in the charges furnished petitioner.

Departmental regulations also require

> that hearings before security hearing boards shall be "orderly" and that "reasonable restrictions shall be imposed as to relevancy, competency, and materiality of matters considered." . . . these indispensable indicia of a meaningful hearing were not observed. It is not an overcharacterization to say that as the hearing proceeded it developed into a wide-ranging inquisition into this man's educational, social, and political beliefs, encompassing even a question as to whether he was "a religious man."

And the excerpts of the hearing transcript set forth in the opinion show this description to be a model of understatement.

Finally the regulations give an

> employee the right "to cross-examine any witness offered in support of the charges." . . . it was not contemplated that this provision should require the Department to call witnesses to testify in support of any or all of the charges, because it was expected that charges might rest on information gathered from or by "confidential informants." We think, however, that [they] . . . did contemplate the calling by the Department of any informant not properly classifiable as "confidential," if information furnished by that informant was to be used by the board in assessing an employee's status. The transcript shows that this provision was violated on at least one occasion at petitioner's hearing, for the security officer identified by name a person who had given information apparently considered detrimental to petitioner, thus negating any possible inference that that person was considered a "confidential informant" whose identity it was necessary to keep secret, . . . without calling the informant and affording petitioner the right to cross-examine.

Harmon v. Brucker[32] involved the discharge of two soldiers (or more accurately, ex-soldiers) on grounds of security risk. The soldiers, who conceded the "absolute right" of the Army to discharge them, were seeking not restoration to their jobs, but "honorable discharge" certificates. The Army Review Board originally found they were only entitled to "undesirable"

discharges, the Secretary of the Army approved that finding, and the statutes say that the Board's findings are "final subject only to review by the Secretary of the Army." The soldiers began litigation nevertheless, and during the course of it the Army decided to move them up to discharge "under honorable conditions," perhaps in the hope of appeasing them or mooting their cases. The soldiers persisted in their claim that the Army could not consider, as it had, records of their pre-induction activities to determine the appropriate form of discharge, although the statutes also say that the findings of the Board "shall be based upon all available records. . . ."

The Solicitor General of the United States denied the jurisdiction of the courts to review the Secretary's decisions but conceded that if they had power, the Secretary was wrong. This startling desertion left, so to speak, the Army's left flank exposed. In a per curiam opinion the Court swiftly put the Army to rout. Once again the Justices demonstrated that whenever they believe an administrative abuse demands judicial correction they have little difficulty in concluding that "final" does not mean final.[33] Here the Court said that if the Secretary had "acted in excess of powers granted him by Congress" . . . "his actions would not constitute exercises of his administrative discretion," and that a court had power "to construe the statutes involved to determine whether the respondent did exceed his powers."

Thus reaching the merits by what might be called Operation Bootstrap, the Court quite reasonably concluded that Congress intended that "the type of discharge to be issued is to be determined solely by the soldier's military record in the Army" and therefore that the "records" referred to in the statute means "records of military service." In this way the Court avoided passing on the question whether the statute as construed and applied by the Secretary violated the due process clause. It would be unfair to say that in dissenting alone Mr. Justice Clark either deserted in the face of the enemy or joined the Army. All too many aspects of the case tempt one to flippancy, but the result stands in the great tradition of what the English call natural justice.

The most recent case in the Warren Court has a more attenuated relation to the removal power in appearance but a far more important one in reality than the Harmon case. When the Chief Justice announced the opinion of the Court in Greene v. McElroy[34] on June 29 of this year, the future of the Defense Department's Industrial Personnel Security Program, covering roughly as many persons in private employment as the entire number of military and civilian employees of the national government, was left in doubt. The Court decided "only that in the absence of explicit authorization from either the President or Congress" the Defense Department could not deny clearance to an aeronautical engineer with the practical effect of barring him from his work by "a proceeding in which he was not afforded the safeguards of confrontation and cross-examination." But the lengthy attack on the constitutionality of any denial of confrontation led Justices Frankfurter, Harlan and Whittaker to concur only in the judgment "intimating no views as to the validity of those procedures," and Mr. Justice Clark, who dissented alone, to predict that the opinion "speaks in prophecy" on the constitutional question. We may leave that issue to the future, as the Court did, for the present case could raise far-reaching questions about the reciprocal participation in both initiative and responsibility for the development of public policy by the triad of President, Congress and bureaucracy.

As the Chief Justice put it,

> the question which must be decided in this case is not whether the President has inherent power to act or whether Congress has granted him such power; rather, it is whether either the President or Congress exercised such a power and delegated to the Department of Defense the authority to fashion such a program.

Thereafter he labored to prove a negative, and Mr. Justice Clark to establish an affirmative, answer. Regrettably, the two discussions do not seem quite to come to grips with one another.

For the question posed by the Chief Justice is, more precisely, two issues. First, what acts or omissions of action, or both in combination, should be taken as a legally sufficient indication that either the President or Congress has exercised the power of delegation? An executive order or a statute respectively is the best. Some lesser document, "something in writing" is often enough. The spoken word, especially if reduced to print, may do. But if anything less were insufficient, government would be much more inefficient than it is and perhaps come to a halt. The other issue is, how specific a delegation, whatever its form, be made? This question of the requisite specificity of standards is a familiar one in case of Congressional, but not Presidential, delegation.

Silence, an omission, presents the difficult problems under either issue. As a legally sufficient indication, silence with knowledge of the delegate's action must often import consent, although it is necessarily the least certain form of indication. But knowing silence as a form of delegation is also necessarily the least specific, and the most generous delegation that can be made. Silence thus poses two questions. Does it indicate any delegation? And if it does, what has been delegated? Perhaps it is a legal fiction that silence can delegate authority, and then it is piling fiction upon fiction to add that the scope of that authority can be drawn out of silence. If these are fictions they are necessarily generated by constitutional government, which requires that all authority establish its legitimacy on demand. Judicial appraisal of the meaning of silent approval is a task in discounting the magnitude of a delegation by its uncertainty.

What various acts or omissions could be a legally sufficient evidence of delegation to the Defense Department to carry out this program in all its details? The Commission on Government Security correctly stated that: "It is clear that there is no statute (or Executive Order) which expressly authorizes the Department of Defense to establish an industrial security program."[35] All of the evidence "in writing" which might establish an "implicit delegation" by either the President or Congress is, to borrow the Chief Justice's words from another opinion, "at best, inconclusive."[36] That is, it does not justify the confidence with which he denied or Mr. Clark found implicit delegation in the documents. We are left with silence, eighteen years of silence, and of knowing silence. For it would be preposterous to assert that both Congress and the President did not know of the program, and not just constructively as all men are presumed to know the law, but actually, as anyone knows what he sees and hears. And they knew that the program included denial of confrontation.[37]

The Chief Justice acknowledged that the ambiguous documents and the knowing silence were a sufficiently certain indication of a delegation, for he declared: "even in the absence of specific delegation we have no difficulty in finding, as we do, that the Department of Defense has been authorized to fashion and apply an industrial clearance program. . . ." Without stopping there he continued: ". . . which affords affected persons the safeguards of confrontation and cross-examination," for the next question is, how generous a delegation shall the silence be taken to confer? The general principle is that whatever has been done is assumed to have been delegated, particularly, and for good reason, if the delegation is within the executive branch.

It is precisely at this point that the Court articulates an emerging, if not new, principle, as an exception to the general principle: "If acquiescence or implied ratification were enough to show delegation or authority to take actions within the area of doubtful constitutionality, we might agree. . . that delegation has been shown here." But the Court does not agree. Instead it holds--at least for this doubtful area--that: "it must be made clear that the President or Congress, within their constitutional powers specifically have decided that the imposed procedures are necessary and warranted and have authorized their use . . . . Such decisions cannot be assumed by acquiescence or non-action."

The citations of authority for the point indicate its novelty. The oldest is Ex parte Endo.[38] Another is a case in the 1958 term.[39] The Watkins case,[40] the Peters case, and the Kent case are the others. There are many fields within "the area of doubtful constitutionality." Will the new principle be applied in them all? And if it should be, what would be the impact on the bureaucracy acting in reliance on Presidential delegations through silent consent?

II. THE CONDUCT OF FOREIGN RELATIONS

Executive Agreements

When the Warren Court agreed to review the decision of the Court of Appeals for the Fourth Circuit in United States v. Guy W. Capps, Inc.[41] there was anticipation that a pronouncement on the President's power to make executive agreements which would rank with the Pink[42] and Belmont[43] opinions would be forthcoming. The case was a curious one. In the Agricultural Act of 1948 Congress had provided for price support of potatoes at 90% of parity. It becomes profitable to import Canadian potatoes, but to provide for this contingency Congress had authorized the President, after investigation and hearing by the Tariff Commission at his direction, to proclaim a quantitative limitation on such imports, not to exceed a restriction of 50% of such imports in a specified previous period. The President did not utilize this method to reduce imports of Canadian potatoes. Instead an executive agreement was concluded with Canada by which Canada agreed temporarily to refuse to permit the exportation to the United States of potatoes for consumption and the United States agreed to permit under license importation of Canadian potatoes for seed purposes under specified conditions, one of which was that the American importer would guarantee that such seed potatoes would not be sold by him as "table stock," that is, eating potatoes. The Capps firm imported about $150,000 worth (in terms of American support prices) of Canadian seed potatoes,

and after some complicated sales, repurchases and resales to various firms most of these potatoes apparently found their way to consumers' stomachs instead of farmers' potato patches. The government sued Capps for damages equal to the cost of buying up at support prices an equivalent amount of American-grown potatoes, on the theory that the Capps firm's assurance constituted a contract with the United States and that Capps had breached it.

Assuming that these novel circumstances constituted a contract and that the government could sue for breach, the District Court decided that the course of conduct of the importer did not amount to negligence or breach of contract. When the government took the case to the Court of Appeals it lost again, but for a very different reason. Chief Judge Parker, citing particularly the Steel Seizure case, held that "the executive agreement was void because it was not authorized by Congress and contravened provisions of a statute dealing with the very matter to which it related." The opinion added:

> It is argued, however, that the validity of the executive agreement was not dependent on the Act of Congress but was made pursuant to the inherent powers of the President under the Constitution. The answer is that . . . the power to regulate interstate and foreign commerce is not among the powers incident to the Presidential office, but is expressly vested by the Constitution in the Congress... . . whatever the power of the executive with respect to making executive trade agreements regulating foreign commerce in the absence of action by Congress, it is clear that the executive may not through entering into such an agreement avoid complying with a regulation prescribed by Congress.

It appeared that the Vinson Court's chickens had come home to roost in the Warren Court's potato patch--and at a most embarrassing time, when acrid controversy was raging over the Bricker Amendment. But Senator Bricker's predecessor shooed them away for a unianimous Court. Professor Arthur Sutherland had observed that Judge Parker's opinion had strangely neglected another provision of the Agricultural Act:[44]

> . . . Sec. 22 of the Agricultural Act of 1948 includes this clause: "(f) No proclamation under this section shall be enforced in contravention of any treaty or other international agreement to which the United States is or hereafter becomes a party." Quite clearly Congress seems to have expressed its expectation and approval of subsequent efforts to adjust Canadian-American differences by agreement, rather than by unilateral proclamation of import fees or embargoes.

Mr. Justice Burton did not avail himself of this rebuttal. Instead he held that "the District Court was not clearly in error in making the findings it did or in directing the verdict for respondent on the ground that no breach of contract was shown." When he concluded that "there is no occasion for us to consider the other questions discussed by the Court of Appeals. This opinion does not rest on them" Capps' seed potatoes lost the distinction of going down in constitutional history with Schecter's sick chickens.

In contrast, the opinions on rehearing in Reid v. Covert[45] contain

probably the most important interpretations of powers of the executive branch that the Warren Court has yet made. The constitutional issues in the case are various and complex, like the world-wide military activities of the United States government which provide their setting. Unfortunately, so are the four opinions, none of which represents a majority of the Court. Since both Justices Frankfurter and Harlan in concurring opinions agreed only that the trial by court-martial in capital cases of civilian dependents of American military personnel overseas in time of peace, as provided by an article of the Uniform Code of Military Justice, is unconstitutional, and the vote of at least one of them must be added to those of the Chief Justice and Justices Black, Douglas and Brennan to make a majority, this is all the case can be said to hold.

Members of the Court disagreed on these important constitutional questions: whether these were cases arising in the land or naval forces, whether, if they were not, Congress might nevertheless provide for trial by court-martial under the necessary and proper clause in conjunction with its power to make rules for the government and regulation of the land and naval forces, and whether all or only some of the guarantees of the Constitution extend to American citizens subject to the jurisdiction of American officials on foreign soil. These are all important, and the different interpretations by the Justices are interesting, but they are questions of executive power only tangentially or not at all.

But in Part II of Mr. Justice Black's leading opinion the question of the President's power to make executive agreements is placed squarely in issue. At the time an Air Force wife killed her husband in England and an Army wife killed her husband in Japan, the jurisdiction of the United States flowed from executive agreements with the respective countries, which provided for trials of such cases by United States military tribunals in return for cession of primary jurisdiction by the foreign nation. The government had contended that even if otherwise unconstitutional the provision of the UCMJ in question "can be sustained as legislation which is necessary and proper to carry out the United States' obligations under the international agreements with those countries." To this contention Mr. Justice Black replied:

> The obvious and decisive answer to this, of course, is that no agreement with a foreign nation can confer power on the Congress or on any other branch of Government, which is free from the restraints of the Constitution. . . . The prohibitions of the Constitution were designed to apply to all branches of the National Government and they cannot be nullified by the Executive or by the Executive and the Senate combined.

Since Justices Frankfurter and Harlan agreed that the statute in its full coverage was unconstitutional, it is clear that they also agreed in rejecting the government's contention. Although Justices Clark and Burton based their dissent entirely on the power of Congress to legislate for the government and regulation of the military forces and therefore did not need to consider the question, they did not give the slightest intimation of support for the government's argument that the statute could be sustained as legislation necessary and proper to carry out the executive agreement. It thus seems correct to say that on this question the Court was unanimous.

Thus was laid to rest, insofar as any Supreme Court decision can ever finally dispose of any great constitutional problem, a question that had been troublesome at least since Missouri v. Holland.[46] Indeed, Mr. Justice Black took pains to make this clear even to the most ardent supporters of the Bricker Amendment by stating:

> There is nothing new or unique about what we say here. This Court has regularly and uniformly recognized the supremacy of the Constitution over a treaty. . . . There is nothing in State of Missouri v. Holland . . . which is contrary to the position taken here.

Another portion of Mr. Justice Black's opinion appears less successful, especially when compared to the action of the Warren Court in Wilson v. Girard.[47] For four members of the Court he took the position that "the Constitution in its entirety" applies to American officials dealing with American citizens abroad, rejecting the contention that "only those constitutional rights which are 'fundamental' protect Americans abroad" and insisting that "when the United States acts against citizens abroad . . . . It can only act in accordance with all the limitations imposed by the Constitution." The parallel to his stand on total incorporation of the first eight amendments in the due process clause of the Fourteenth Amendment against state action is obvious.[48]

The Girard case is too recent and too well publicized for its facts to need or bear extended recital. While on guard duty during maneuvers in Japan the soldier had fired from a grenade launcher on his rifle a cartridge case which struck and killed a Japanese woman gathering brass nearby. Under our treaty and executive agreement with Japan primary jurisdiction to try Girard, by court-martial, was in the United States if Girard's act was done in line of duty, and in Japan if it was not. It is important to bear in mind that from start to finish the United States maintained that Girard had acted in line of duty and that we therefore had primary jurisdiction. But like our other international agreements on the subject, those with Japan provide that the state with primary jurisdiction shall give sympathetic consideration to a request to waive its jurisdiction to the other state in any case which is of particular importance to it. Typically, of course, the United States makes rather than receives such requests, and typically they are granted. When Japan claimed primary jurisdiction over Girard we resisted until international tension became severe. Eventually, for what the Secretaries of State and Defense obliquely admitted in their joint statement to be "reasons of state" we waived jurisdiction. A district court then enjoined Secretary Wilson from surrendering Girard to Japanese authorities, and amid even greater tension the Supreme Court agreed to extend its regular term to review this decision immediately.

Three days after the case was heard, the Supreme Court (Mr. Justice Douglas not participating) gave its unanimous decision, reversing the District Court and holding that there was "no constitutional or statutory barrier" to our waiver of jurisdiction. The decision was no doubt wise, and an impressive argument to support it is not unduly difficult to construct. The circumstances imperatively demanded its construction and presentation. But there is no other honest way to describe the brief per curiam opinion than as a pathetic

failure to measure up to the Court's responsibility.

The Court simply declared that since "a sovereign nation has exclusive jurisdiction to punish offenses against its laws committed within its borders, unless it expressly or impliedly consents to surrender its jurisdiction" and since "Japan's cession to the United States of jurisdiction to try American military personnel for conduct constituting an offense against the laws of both countries was conditioned" by the provision for waiver of primary jurisdiction, the "issue for our decision is therefore narrowed to the question whether . . . the Constitution . . . prohibited the carrying out of this provision authorized by the Treaty for waiver of the qualified jurisdiction granted by Japan." And the Court found nothing in the Constitution which did prohibit it. We may agree that it should not have found anything even if it had looked, but it did not bother to look.

Because of this failure to examine the relevant constitutional provisions the Court put itself in one of two equally awkward positions. It was either begging the very question it posed or it was reasoning in a circle to reach an answer. The circular reasoning may be put thus. If there were no agreement with Japan, she would have primary jurisdiction to put Girard on his trial, in which he would have no constitutional rights. Therefore an agreement by which the United States gained primary jurisdiction, even though with a qualification under which it waived jurisdiction and thus left him without the constitutional rights which he would have had under American jurisdiction, does not deprive him of these rights, since he would not have had any rights without the agreement anyway. In short, he was deprived of nothing by the agreement because he had nothing without it.

Consider how easily Reid v. Covert could have been disposed of under this formula. There too the foreign nations in the absence of an agreement had primary jurisdiction to put the American wives to trials in which the Constitution would not protect them. There too we obtained by agreement primary jurisdiction also conditioned by a qualification, namely, that we would try them by court-martial. But since without the agreement they would not have been entitled to the jury trial to which they would be entitled if subject to American jurisdiction, why should they be heard to demand, contrary to the agreement, what they could not have without it anyway? In short, they were not deprived of the right to jury trial by the agreement, because they had no right to trial by jury without it.

Now let us examine the opinion as a form of petitio principii, especially by the Chief Justice and Justices Black and Brennan in light of their conclusion in Reid v. Covert that the executive could not validly negotiate away the specific (and absolute) constitutional rights of American citizens, there particularly to jury trial. The question in the Girard case was also whether the treaty and agreement deprived him of whatever specific (and absolute) constitutional rights he had. To be sure, since he was a soldier he did not have the same specific constitutional rights as civilians. But if we read the Bill of Rights with absolute literalness, the only right civilians have that he did not is the right to indictment by grand jury. Let us concede, however, that Congress has from the beginning claimed the power to provide for trial of military personnel by court-martial instead of by jury and that the courts have consistently affirmed that claim. If one is sufficiently

literal minded he may insist that Girard therefore had, by statute, by executive practice, and by adjudication, a constitutional right either to trial by jury (which Congress not only can but does provide for some cases) or to trial by United States court-martial, nothing less and nothing more.[49] If that claim be correct, how can anyone deny, in view of their application to Girard, that the Executive through an agreement and the Executive and Senate combined through a treaty had negotiated away his constitutional rights? Yet we have it on good and current authority that the "prohibitions of the Constitution were designed to apply to all branches of the National Government and they cannot be nullified by the Executive or by the Executive and the Senate combined."

The dilemma with which the Warren Court has thus confronted itself takes this form: either all the Constitution follows a command post flag or none of it does. There is only one logical way out of this dilemma. Fortunately that way is as just as it is logical. We can illuminate this path of escape by moving Girard's case in our imagination back to an Army post in the United States, say Fort Belvoir, Virginia. Congress could certainly provide for the trial of the same offense committed there by court-martial. There seems no reason why it could not provide for his trial by the regular United States court of the state and district where the offense was committed although it has never done so. Or Congress could provide for his surrender to the Virginia authorities for trial in a state court. What Congress could not do constitutionally is just as clear. It could not subject Girard to any trial, civil or military, state or federal, of a kind which amounted to a legalized lynching, made a mockery of due process of law, and violated "those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions."[50]

This is the true and full measure of an American citizen's constitutional rights as a soldier at home. It ought to be, and in fact it is, the same measure of his rights overseas. The President in negotiating executive agreements, the President and Senate in making treaties, the Congress in legislating, and American executive authorities abroad have scrupulously preserved these fundamental rights.[51] Why, in freedom's name, could not the Court have said as much in Girard's case? For one reason, it did not take the time,[52] but more is involved. One must surmise that at least some members of the Warren Court mistakenly thought they must appear either illogical or unjust, and chose the lesser evil. For if the measure of the American citizen's rights as a soldier overseas is only that "subjective" "natural law" concept of due process, is the measure different--and greater--because he is a civilian overseas? And if so, why? To make it so would truly degrade the soldier to a second-class citizen and justify the deep suspicion of and bitter hostility to all executive-military jurisdiction which so unnecessarily inflames many pages of the leading opinion in Reid v. Covert. Would not all members of the Warren Court have been wiser to accept the advice of Professor Sutherland?[53]

> The basic decencies of the Bill of Rights should be guides for our officials everywhere. This does not mean that all details of the first eight amendments are mandatory procedure for every American official abroad. . . . We are necessarily remitted to some such standard as that imposed on state officials by the fourteenth amendment.

Passports and Travel Control

In Kent v. Dulles[54] and its companion case, Dayton v. Dulles[55] the Warren Court adopted as narrow a view of Executive power as it has yet expressed, largely by ignoring it. The position adopted by the Court and set forth by Mr. Justice Douglas had the support of a bare majority. The cases were brought by three citizens whose applications for passports had been denied; those of Kent and Briehl because they refused to submit non-Communist affidavits which were required of them under the State Department's regulations, though each had been given a hearing. Dayton had submitted an affidavit, had had a hearing, and ultimately was refused a passport on review and findings by the Secretary himself; these findings made clear that confidential information had been considered. The Kent case was made the vehicle of decision and the Dayton case was settled on its authority.

Until 1856 the Secretary of State issued passports in his discretion wholly as an exercise of inherent executive power. In that year Congress adopted an act which is still in effect, forbidding anyone else to issue a passport. Its language appears carefully chosen to recognize an inherent executive power and discretion rather than to delegate power: "The Secretary of State may grant and issue passports . . . under such rules as the President shall designate and prescribe . . . ."

Mr. Justice Douglas could hardly deny that there is "a large body of precedents" and massive official and scholarly opinion which hold issue of a passport is a "discretionary act." He appears not to disagree, but opines in the Kent opinion that "the key to that problem . . . is in the manner in which the Secretary's discretion was exercised. . . ."[56] This suggests that it was the procedures for such cases which, on insistence of the courts, the Department had established by regulation, that were in question. Since Kent and Briehl had been refused passports for failure to supply a non-Communist affidavit, and the Court did not claim that this requirement itself was invalid, and scarcely could have without overruling a parcel of its recent decisions, the mystery deepens.

In 1952 Congress passed an act which provides that in time of war or national emergency on Presidential proclamation it is "unlawful for any citizen of the United States to depart from or enter . . . the United States unless he bears a valid passport." President Truman had so proclaimed. Normally a passport has not been required to enter or leave the country, but the exceptions made by Congress and characterized as "minor" in the opinion of the Court include the War of 1812, World War I, and the entire period from 1941, prior to Pearl Harbor, until the present. In addition, the Executive had enforced the same rule under his independent power during the Civil War. The power to refuse a passport and the power to forbid exit without one are distinct, although discretion to refuse a passport becomes more important when one is required for foreign travel.

The government acknowledged that a citizen has a right to travel abroad, which he cannot be deprived without due process. The Court proclaimed this to be a constitutional "liberty" for the first time. Again it would appear that the question therefore becomes the reasonableness of the procedures by which the Secretary exercised his discretion, but not so.

Instead discussion turns to the grounds upon which rather than the procedures by which discretion has been exercised to refuse passports. Mr. Justice Douglas holds that the only two grounds in the Department's peacetime practice are non-citizenship, in accordance with statutory provisions, and criminal activity. Mr. Justice Clark rightly states in the dissenting opinion that this is one of the two propositions "vital to the Court's final conclusion" and that it is "contrary to fact." The Court's opinion admits that ever since the Russian Revolution the Department at times denied Communists passports but states its practices had not "jelled" this into a third ground by 1926. One may wonder why the date in the Coolidge administration appears. In that year Congress had reenacted the 1856 statute in the United States Code. Mr. Justice Douglas, without discussion, treats this statute as delegating power to rather than recognizing power in the Secretary and as also limiting the grounds for refusal to the two already "jelled." Without explanation he shifts over to a denial sub silentio of any inherent power in the executive.

Worse, from the standpoint of intellectual honesty, is to come. Granted, after 1926 passports were frequently denied on grounds of Communist membership. (And of course when the policy was to grant them, that was equally an exercise of discretion.) Admitted also, that in the Internal Security Act of 1950 Congress had made criminal both application for and grant of a passport if the applicant is a member of a "registered" Communist organization--a provision which may yet become effective. True, although unmentioned in the opinion, the legislative history of the 1941 statute forbidding travel without a passport clearly shows Congress recognized the Secretary's discretion to deny passports on security grounds. Indeed, any such law is essentially meaningless otherwise. True also, the provision in the act of 1952 was designed to replace and put on a permanent basis the emergency legislation of 1941, which was about to expire, and in passing it Congress knew that the Secretary did and expected that he would continue to exercise his discretion to deny passports to Communists.

Still, the Court hesitates

> to impute to Congress, when in 1952 it made a passport necessary for foreign travel and left its issuance to the discretion of the Secretary of State, a purpose to give him unbridled discretion to grant or withhold a passport from a citizen for any substantive reason he may choose.[57]

It takes real skill to pack so many errors into a single sentence. First, the 1952 act forbidding foreign travel without a passport is treated as a law regulating denial of passports. Further, the idea that the Secretary no longer has any discretion in grounds for denial except that which Congress gives him is reiterated as self-evident. Finally, despite the fact that the Departmental regulation prescribing Communist membership and activity as the ground for denial is alone in question here, the hint is subtly conveyed that to concede this to be a rational exercise of discretion is equivalent to allowing the Secretary to keep at home people with red hair or blue eyes if the fancy strikes him.

Such performances, whenever the Court indulges in them and however lofty

the ideals that motivate them, are bound to revive Justice Jackson's mot: "We are not final because we are infallible, we are infallible because we are final." In this way, however, the Court reached the conclusion that the statutes "do not delegate to the Secretary the kind of authority exercised here."

III. CONCLUSIONS

No less an authority than Max Weber pointed to the conflict always potentially present between a modern bureaucracy and the judiciary, particularly in Anglo-American jurisdictions:[58]

> For the field of administrative activity proper, that is, for all state activities that fall outside the field of law creation and court procedure, one is accustomed to claiming the freedom and paramountcy of individual circumstances. General norms are held to play primarily a negative role as barriers to the official's positive and "creative" activity, which should never be regulated. . . . Yet the point that this "freely" creative administration . . . does not constitute a realm of free, arbitrary action, of mercy, and of personally motivated favor and valuation . . . is a very decisive point. The rule and the rational estimation of "objective" purposes, as well as devotion to them, always exist as a norm of conduct. In the field of executive administration, especially where the "creative" arbitrariness of the official is most strongly built up, the specifically modern and strictly "objective" idea of "reasons of state" is upheld as the supreme and ultimate guiding star of the official's behavior.

But he observed of the judicial process:

> American adjudication of the highest courts is still to a great extent empirical; and especially is it adjudication by precedents. . . . formal judgments are rendered, though not by subsumption under rational concepts, but by drawing on "analogies" and by depending upon and interpreting concrete "precedents." This is "empirical justice." . . . it postulates substantive justice oriented towards some concrete instance and person; and such an "ethos" will unavoidably collide with the formalism and the rule-bound and cool "matter-of-factness" of bureaucratic administration.

No words could be found more prophetic of the problems faced by the Warren Court as it attempts to provide substantive justice in concrete instances and for concrete persons affected by the efforts of an Executive necessarily guided by cool, rational, objective consideration of what reasons of state require to protect the security of the country in the Cold War. It is a measure of the wisdom of that great scholar that he did not denigrate the vital purposes of either the bureaucracy or the judiciary when such conflict occurs. His wisdom certainly deserves the attention, and may we add, the emulation both of those members of the legal profession who recently accused the Warren Court of invoking "technicalities. . .against the protection of our nation"[59] and of that considerable number of political scientists who have regularly, and dare one say, monotonously denounced efforts of the executive

branch to protect the nation's security under both Presidents Truman and Eisenhower as merely irrational and viciously unjust. How petulant many of these demands that our Chief Executive and our Supreme Court apologize for sincere efforts to protect the nation and to render justice sound!

The impact of the Warren Court's decisions on the Executive Branch can be summed up only tentatively. What the record makes clearest is the willingness of the Court to place limitations on executive power. There is a concept of executive power which tempts its holders to regard at least any new legal restriction upon what a President may do as somehow a subtraction from and diminution of his power. Apparently some critics, out of their rightful concern for the maintenance of a strong Presidency in today's world, have adopted that concept. The Warren Court has rejected it, for good reason. For this concept of power is a logical fallacy, perhaps alluring because it seems scientific. The President's power is not a quantum which will eventually be amenable to expression in mathematical terms when the calculus in which to compute it has been perfected. The analogy of executive power to horsepower is fatally misleading. The power of a President rests ultimately upon public confidence that he cannot lawfully do some things and will not try to do them. Thus a rule that the President may not arbitrarily remove an officer performing quasi-judicial functions, invoked in the Wiener case, or a rule that he cannot by an executive agreement deprive American citizens abroad of their fundamental right to due process, which is the likely meaning of the Covert and Girard cases in combination, or a rule like that enforced in the Vitarelli case, that in removing an official on security grounds the executive must observe the procedural regulations which he has proclaimed in an effort to meet constitutional requirements may each ultimately enhance rather than diminish the power of a democratic executive.

In some cases, particularly Peters v. Hobby and Greene v. McElroy, there appears a tendency which, if it were to become more dogmatic or be given general application, would be a serious and unjustifiable judicial encroachment on executive authority. That tendency is to insist on an unrealistic and undesirable formalism in the relations between the President and his assistants in the executive branch. Mr. Justice Reed's admonition against analogizing these relations between superior and subordinates to those which obtain between coordinate legislative and executive branches is a wise one. It may seem the more remarkable that these analogies have been drawn by a Chief Justice who has had important and substantial experience as an executive head of a great government.

If these are the main results of the Warren Court's interpretations of executive power, what is to be said of the technique by which it has characteristically achieved them? Professor Herman Pritchett in The Political Offender and the Warren Court has described it as follows:[60]

> Where the Court has contrived to invalidate official action, which it has done rather often, it has typically been for rather narrow reasons . . . . certainly the starting point . . . is recognition of the caution the Warren Court has shown in taking new constitutional positions as to the rights of political offenders. The libertarian effects which the Court has recently

> achieved have been secured for the most part through the interpretation of statutes, not through the interposition of constitutional barriers.

When the issues facing the Court are so novel and so grave there is certainly much to commend in the gingerly tentativeness with which the Court has approached their resolution. But in speaking of the Court's "obligation to judge" Professor Pritchett added:[61]

> If the Supreme Court's primary obligation is to avoid taking a position on matters of acute public controversy or where the interests which the Court is protecting are not substantial enough to give the Court a reasonable measure of support if a hue and cry is raised by the decision, then this recent experience suggests that this self-restraint doctrine needs to reformulated.

The Warren Court has frequently avoided prematurely final decision of constitutional questions only at the price of appearing, even if it be not, disingenuous. At times, especially in Greene v. McElroy and Kent v. Dulles, the Warren Court has almost seemed to create an irrebutable presumption of Presidential and Congressional ignorance, and its versions of the process of government have taxed credulity. The worst damage wrought by such opinions is likely to be upon the Court itself. Men who begin to suspect, even wrongly, that their judges are less than candid in appraising the facts are likely to end by distrusting their statements of the law. Such a consummation is not to be wished for, and both the Court and its critics need to take thought promptly about how it may be avoided.

There are of course canons of propriety that control what may be said in a Supreme Court opinion. But would they have been breached if the Court had spoken to the President and Congress in some of these cases in words like these? When we say that you did not know and did not intend that those in the executive branch would do what they have done, we do not mean that you were unaware of their probable or subsequent action, or that you did not in some more or less casual way approve their acts. What we do mean is that we are not sure that you were aware of the full consequences that your intention or approval carry with them, and what we ask of you, before we must pass upon these consequences, is your reconsideration of them and your renewed assurance that in full knowledge of them you have concluded that pro bono publico they must be borne.

Some may hold that such candor would have been wrong, for undoubtedly it would express a far-reaching claim for the judicial power. The Court would thus have at its command a kind of suspensory veto as an adjunct to the possibility of wielding as final a veto power as it now possesses. But it has long been a truism among constitutional scholars that the only kind of veto which the Court has ever held over governmental action that public opinion persistently supports as "a felt need of the times" is a kind of suspensory or delaying power. At least, an admission that a greater freedom of action is justified in the Court's use of its suspensory veto power than older versions of the function of judicial review suggest would be an interesting parallel to the Warren Court's invention in the public school integration decisions of the novel and socially useful principle that actions

admittedly less than constitutional may under appropriate circumstances be given temporary judicial sanction. Some of us might believe that both principles represent constitutional relativism at its best.

Something should be said about the basic jurisprudence, as distinguished from technique, which underlies these decisions of the Warren Court. There is a type of legal theory which promotes the kind of constitutional construction that yields propositions like the following three. First, the President's inherent removal power must extend to all officers if it extends to any and may be exercised for any reason if it may be exercised for some. Second, if denial of confrontation and cross-examination is invalid in some governmental proceedings it is unconstitutional in all. Third, if any provision of the Constitution follows the American citizen in his relations with his government overseas all of them do. The Warren Court rejected the first of these in the Wiener case. A majority has never accepted the second, suggested a reasonable substitute for it in the Vitarelli case, but then came perilously close to embracing it in the Greene case. The third was rejected by a majority explicitly in the Covert case and implicitly though silently by the Court in the Girard case.

The legal theory that animates constitutional construction which in turn produces such propositions of law is what has long been called "a jurisprudence of conceptions" or mechanical or conceptual jurisprudence. In another day it was attacked by scholars who saw in such decisions as those in Adkins v. Children's Hospital[62] wrongful judicial interference with orderly social adjustments to the problems of their time. Quite apart from the "value preferences" of those who attacked this "slot-machine" theory of law are the logical objections to it. For in terms of logic does not all such mechanical jurisprudence come down to a manipulation, knowingly or ingenuously, of the twin fallacies of composition and division?[63] Any court, especially when confronted with novel and difficult questions, must be under a strong temptation to fall into them, because the psychic comfort they provide though illusory may be comfort nevertheless. Justice Sutherland may sometimes seem to have on the Warren Court his logical descendants, who can be identified by similar polemical style despite their rebellion against his taste in "values." But fortunately most members of the Warren Court most of the time deserve and are here given credit for a wise and courageous refusal to resort under great tension to the use of that judicial tranquillizer pill once so popular.

FOOTNOTES

1. See particularly G. A. Schubert, Jr., The Presidency in the Courts, Minneapolis, 1957.
2. 350 U.S. 11.
3. Cf. the holding, 350 U.S. at 23.
4. Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579.
5. 347 U.S. 483.
6. Reid v. Covert, 351 U.S. 487, and Kinsella v. Krueger, 351 U.S. 470 were consolidated for rehearing and decision in Reid v. Covert, 354 U.S. 1.
7. Chronologically, they are
   (1) United States v. Guy W. Capps, Inc., 348 U.S. 296.
   (2) Peters v. Hobby, 349 U.S. 331.
   (3) Cole v. Young, 351 U.S. 536
   (4) Service v. Dulles, 354 U.S. 363
   (5) Reid v. Covert, 354 U.S. 1
   (6) Wilson v. Girard, 354 U.S. 524
   (7) Harmon v. Brucker, 355 U.S. 579
   (8) Kent v. Dulles, 357 U.S. 116
   (9) Dayton v. Dulles, 357 U.S. 144
   (10) Wiener v. United States, 357 U.S. 349
   (11) Vitarelli v. Seaton, 79 S.Ct. 968
   (12) Greene v. McElroy, 79 S.Ct. 1400.
8. U.S. v. Guy W. Capps, Inc.; Service v. Dulles; Wilson v. Girard; Wiener v. U.S.
9. Service v. Dulles.
10. Harmon v. Brucker and Wilson v. Girard.
11. Harmon v. Brucker.
12. U.S. v. Guy W. Capps, Ind.
13. In Reid v. Covert, 354 U.S. 1, the decision of the District Court in Covert v. Reid was affirmed and the District Court in Krueger v. Kinsella was reversed.
14. U.S. v. Guy W. Capps, Inc. and Wilson v. Girard.
15. U.S. v. Guy W. Capps, Inc.
16. Peters v. Hobby; Cole v. Young; Service v. Dulles; Harmon v. Brucker; Wiener v. U.S.; Vitarelli v. Seaton; and Greene v. McElroy.
17. Wiener v. U.S.
18. U.S. v. Guy W. Capps, Inc.; Reid v. Covert; and Wilson v. Girard.
19. Kent v. Dulles and Dayton v. Dulles.
20. In Bailey v. Richardson, 341 U.S. 918, the decision of the Court of Appeals upholding a dismissal stood affirmed only by a 4-4 division.
21. 357 U.S. 349.
22. 349 U.S. 331.
23. See particularly E. Bontecue, The Federal Loyalty-Security Program, Ithaca, 1953, pp. 246-48, and Association of the Bar of the City of New York, Report of the Special Committee on the Federal Loyalty-Security Program, N.Y., 1956, pp. 174-80.
24. 349 U.S. at 354.
25. 354 U.S. 363.
26. 347 U.S. 260.
27. Shaughnessy v. United States ex rel. Accardi, 349 U.S. 280.

28. 351 U.S. 536.
29. Cf. C. H. Pritchett, The Political Offender and the Warren Court, Boston, 1957, p. 51.
30. Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 at 637-38.
31. 79 S.Ct. 968. The Department of the Interior reinstated Dr. Vitarelli on June 26, 1959. He has not been since discharged under the Secretary's plenary power.
32. 355 U.S. 579.
33. Extensive citation would be supererogatory but see, typically, Estep v. United States, 327 U.S. 114.
34. 79 S.Ct. 1400. Cf. Taylor v. McElroy, 79 S.Ct. 1428, held moot.
35. Commission on Government Security, Report, Washington, D. C., 1957.
36. Brown v. Bd. of Education of Topeka.
37. The Commission on Government Security, appointed jointly by the President and Congress, had reported that fact to them both, op. cit., p. 262.
38. 323 U.S. 283.
39. Scull v. Virginia, 359 U.S. 344.
40. Watkins v. United States, 354 U.S. 178.
41. 204 F.2d 655 and 348 U.S. 296.
42. United States v. Pink, 315 U.S. 203.
43. United States v. Belmont, 301 U.S. 324.
44. A. E. Sutherland, "The Bricker Amendment, Executive Agreements, and Imported Potatoes," 67 Harvard Law Review 281.
45. 354 U.S. 1.
46. 252 U.S. 416.
47. 354 U.S. 524.
48. See particularly his dissenting opinion in Adamson v. California, 332 U.S. 46.
49. For such a literal-minded contention and its rejection by the Court, cf. Madsen v. Kinsella, 343 U.S. 341.
50. Palko v. Connecticut, 302 U.S. 319 at 328, quoting Hebert v. Louisiana, 272 U.S. 312.
51. For a thorough consideration see "Criminal Jurisdiction over American Forces Abroad," 70 Harvard Law Review 1043.
52. In Ex parte Quirin, 317 U.S. 1, Chief Justice Stone announced the decision in the Nazi saboteurs' case promptly but delayed filing of an opinion. The same course would have been better in the Girard case.
53. A. E. Sutherland, "The Flag, the Constitution, and International Agreements," 68 Harvard Law Review 1374 at 1380-81.
54. 357 U.S. 116.
55. 357 U.S. 144.
56. 357 U.S. at 125. Emphasis added.
57. 357 U.S. at 128. Emphasis added.
58. H. H. Gerth and C. W. Mills, From Max Weber: Essays in Sociology, Galaxy Ed., N.Y. 1958. The quotations are from the essay on "Bureaucracy" in the section subtitled "Bureaucracy and Law," pp. 216-21. It is believed their arrangement here does not misrepresent Weber.
59. Report of the committee on Communist tactics, strategy, and objectives of the American Bar Association submitted to its House of Delegates on February 24, 1959.
60. C. H. Pritchett, The Political Offender and the Warren Court, Boston, 1958, pp. 60 and 62.

61. Ibid., p. 71
62. 261 U.S. 525.
63. M. R. Cohen and E. Nagel, An Introduction to Logic and Scientific Method, N.Y., 1934, p. 377.

THE CASE AGAINST POLITICAL THEORY

By

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The subject presented for our consideration is: What is political theory? I do not, however, propose to attempt a direct answer to that question. Instead I would ask: Is political theory either necessary or desirable for the study of politics? Or, to put it briefly, Is political theory good? You may quite properly wonder how I can expect to say whether something is good before I have said what I think that it is. For the moment I defend the respectability, if not the logic, of this procedure by reminding you that Socrates, in Plato's Republic, unhesitatingly undertakes to convince Glaucon and Adeimantus that justice is intrinsically good almost immediately after he has said that he knows nothing about it. Politics, I shall argue, is a practical discipline, and therefore to speak of political theory--a theory of practice--is itself an anomaly. The theoretical point of view, as I understand it--considered ideally, and not in its limited attainment even in sciences to which it is unquestionably proper--is the point of view of the observer who is neither affected by what he observes nor who affects the objects under his observation. However difficult it may be to achieve such detachment in other sciences--as in physics, where the energy of the light which makes observation possible affects the objects even as they are being observed--it nonetheless remains a guiding intention. In politics, I maintain, such detachment is not only impossible, but undesirable. An active concern with political objects, a care for them which naturally expresses itself in both love and hate, is the very condition of their "visibility" to the eye of the mind. Political objects, by and large, exist only in the realm of human opinion. The political system which constitutes the United States exists mainly in the minds of the people of the United States. Because there is such a state of mind, we observe certain behavior which expresses itself in statutes, judicial decisions, voting, military service, legislative assemblies, etc. Yet no description of political behavior, however comprehensive, would convey an understanding of this political system if the animating principle or

principles behind it was not grasped. A thorough understanding of the state of mind represented by the Preamble of the Constitution would enable any astute reader to deduce at least a rough approximation of the frame of government that follows it: e.g. separation and limitation of governmental powers, frequent elections, etc. But could someone who knew nothing of how the Founding Fathers regarded property, or civil and religious liberty, comprehend how the frame of such a government might be expected to operate? Liberty and property are things that, I maintain, no one can possibly understand by mere observation, apart from having experienced in some way or other the passions those mighty symbols have engendered, just as one cannot understand what life is, without feeling in his own soul its preciousness and its precariousness. Only as a man has compared in the experience of his own existence, the things that make it valuable to him, on the one hand, and the things that make it a burden to him, on the other, can he even begin to grasp what it is. The fundamentals of man's moral and political existence are disclosed to him only as he is stimulated by pleasure and pain, and as he is moved to love and to hate. Strictly speaking, political theory is impossible, because the detachment implicit in the idea of theory would shut us off from access to political phenomena; yet the illusion that theory is the goal or summit of political science can produce, and is producing, the most deleterious consequences for our profession.

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My colleague David Easton has written that all mature scientific knowledge is theoretical. Leaving aside the question of whether political knowledge is scientific, I would deny that mature knowledge of politics is theoretical. Theoretical knowledge, as I understand the term, is general: that is, it describes the invariant relationships that subsist among a number of different particular objects. The greater the number of objects

of which a given generalization is true, the more "mature" our knowledge of those objects is. The Newtonian laws of motion are, I understand, still an accurate prototype of pure theoretical understanding: they describe invariant relationships among all actual, or possible, bodies in the universe. But let us consider the relationship of generality of this kind to political knowledge. A political question par excellence, I should think, would be one which had to do with the relationship of the United States and the Soviet Union. For example, in the light of the generally understood goals of American policy, should the United States seek a detente through summitry now or should it first increase its conventional military forces so as better to neutralize Soviet force on the continent of Europe? To answer this, we would need a whole series of valid propositions concerning both the United States and the Soviet Union, as political systems. Both are systems to which the term "super-state" clearly applies today. Super-states are species of the genus "state" even as "state" is a sub-genera of "political community," a term which embraces "city-states," "empire-states," and others. But what is true of all "super-states" will be true of both the Soviet Union and the United States, and will be only of conditional value in deciding what policy one of these ought to pursue with respect to the other. The more general our political knowledge, the more abstract, the more remote it is from political reality. After all, the "super-state" has no real existence, any more than the "state," or the "polis." The Soviet Union and the United States, like England, France, and Germany--or like Athens, Sparta, and Jerusalem once upon a time--alone are political realities. And political knowledge, as it seems to me, must culminate in the comprehension of what is proper to each particular political system, rather than in the perception of what is common to all. Politics in a radical sense, more than any other discipline, is oriented toward the empirical. I am not here arguing that we should not have such things as

definitions of "the state." Students of politics must classify their data, and general terms come naturally into use. It will be a matter of the first importance when, for instance, China becomes (if it does become) a power of the rank of the United States or the Soviet Union. And we must be clear as to what constitutes a power of that rank in order to make that observation. But the end in view is not that we know what constitutes a super-state (the generalization), but that we be able to tell when and whether China is one (the particular judgment.)

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In The Political System Easton deals with two main objections to the possibility of genuine theory in political science. The first of these is the self-fulfilling or self-denying prophecy. This states, in brief, that any theory of social or political behavior is itself a political datum, and as such capable of being a cause of change in the field it purports to describe. Since the change it causes will not have been taken into account when the theory was formulated, it will falsify the theory. Whether the theory induces behavior intended to contradict the theory (the self-denying prophecy) or to fulfill the theory (the self-fulfilling prophecy) is secondary: in either case the theory has become part of the field it was intended to characterize and the theory as formulated is no longer valid. Easton's main reply to this objection, as I understand, is this: a theory may assert a relationship among specified variables while assuming other factors to remain constant. It may then by definition exclude itself from (or include itself in,) the field it characterizes. This reply, I think, is reasonable and correct when we have in mind the lesser hypotheses that must be developed and tested on the way to the construction of the grand Newtonian-style hypothesis, the "true" theory which is the ultimate end and goal of a "true" science. But such a generalization, about all political communities, obviously cannot contain the limitation that no member of any political community learn of it--a proviso that

. . . could not be fulfilled if the theorist was himself a member of such a community--as he would . . . have to be, in some way or other.

As a further reply to the self-fulfilling or self-denying fallacy Easton claims that there are some hypotheses whose validity does not depend upon the knowledge or ignorance of those to whom they apply. I do not find the example he gives to be at all convincing. "Certain consequences of the division of labor," he writes, "cannot be avoided, however widely they are advertised. The fact of ensuing industrialism is a result that no amount of human knowledge can alter, as long as a division of labor prevails." You will observe that Easton ascribes causal necessity to the relation of the division of labor and industrialism. And yet it is a fact, I believe, that industrialism has accompanied the division of labor only in modern times: in the ancient world the division of labor was widely known and implemented, and yet industrialism--meaning thereby the process of manufacture accompanied, as Easton says, by technological change--never occurred. Industrialism in the present-day sense is a consequence of the application of modern science to the problems of production, something that incidentally involves the division of labor. Yet Easton elaborates upon his law thus: "Once knowledge of the effects of urban concentration and industrialism has been dispersed...it does little to change the relationship between industrialism and urban concentration." If this statement means that knowledge can never change the relationship between industrialism and urban concentration, it seems certainly wrong. What is town planning all about? Easton himself seems aware of this when he continues by saying that "The generalization still prevails that <u>undirected</u> industrialization [italics added] leads to vast congregation of human beings in small areas." His original formulation of his hypothesis did not speak of <u>undirected</u> industrialization. Indeed, he originally spoke of the consequences of industrialization as being inescapable "given the condition that society early [i.e. early in the industrial revolution] decided to intervene

only peripherally in the whole process of industrialization." In other words, when manufacturers find it convenient to have their workers piled up in slums next door to the factories, and when these same manufacturers are largely in control of the government, slums will then almost certainly pile up. That is not undirected industrialization, but industrialization directed toward concentration. On the other hand, if a British labor government decides upon industrial dispersion in new towns, then urban concentration--at least on the 19th century pattern--will not occur. I see nothing in the nature of a law, or even of a generalization here, unless it be that major social changes tend to occur in accordance with the fixed dispositions of those who control governmental power. In no event do I see any pre-determined consequences flowing from the division of labor (other than those implied tautologically in the definition of the expression) or industrialization which are not to be accounted for by the presence or absence of other factors, that is, factors such as the dominance of 19th century liberalism or twentieth century socialism, factors which are not contained in Easton's original hypotheses.

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It seems to me that generalizations like the division of labor causes industrialism, or industrialism causes intense urban concentration, are prime examples of what Easton himself would call a "culture-bound" social science. Given the "values" of 19th century British liberalism, it was in fact altogether probable (although by no means necessary) that industrialism would have the consequences Easton mentions. But it is equally true that, given different "values" dominant in the governing system, different effects are probable. For example, the rate at which capital is channeled away from consumer goods and into heavy industry in the Soviet Union is quite different from what it has been or is in the Western capitalist countries. It is almost inconceivable (although, again, one can hardly say impossible) that

capital formation on the Soviet pattern would ever happen under democratic auspices. The "values" in virtue of which men opt for what we in the West call democracy also induce us to choose less drastic methods for attaining social goals. On the other hand, Soviet Communists, opting for the advantages that first-class political power confers, must perforce opt for a political system that denies any weight to the political opinion that does not genuinely accept the burden imposed by such a goal. Those who prefer pleasure, comfort, or political freedom now, to power later, must be disfranchised. Since the vote of the shiftless and of the dedicated count the same in western-style democracy, western-style democracy is incompatible with at least some conspicuous "values" of Soviet Communism. I think it would be a painful laboring of the obvious to try to demonstrate further that "values" are an integral part of all social causation, and that the effects of any such "cause" as industrialization are utterly unpredictable apart from the "values" impelling those who are the agents in the process of industrialization. No generalizations as to the effects of industrialization which do not, tacitly or overtly include a specification of the "values" guiding the process, have any validity whatever. Unless then, true and comprehensive generalizations as to human "values" can be made, no enduring generalizations concerning social causality are to be expected.

Easton does recognize that most theories, so-called, are valid "if at all within the limits of a particular cultural situation." But he is optimistic that, as we define each cultural situation with ever-increasing care and precision we will gradually distinguish the culturally conditioned from the culturally unconditioned and arrive at "truly universal propositions." But this expectation--and I cannot see that it is more than that--seems to me to be unjustified. The idea of a "culture" is the idea of a community of tastes and preferences--religious, artistic, gastronomical, sexual, athletic--a community of "values." And values are, on Easton's own definition, essentially idiosyncratic. They are, he says, ultimately reducible "to emotional responses

conditioned by the individual's total life-experience." He does not say so, but I understand him to mean that they are intrinsically nothing more than the aforesaid responses. That is to say, on this view of values there is nothing in which the emotional responses of all men are grounded which provides a non-emotional standpoint from which to view values. I would be the last to deny that values are emotional responses; but it seems to me that if political science were to be a science like physics--or if it were to be capable of dealing with the problem of universal judgments concerning human actions in any other way--it must assume a uniform underlying principle of causality within the universe of human values no less than among the other political facts for which it seeks the causes. There must be a human nature that is in some sense the uniform cause underlying all human valuing even as gravity is the uniform cause underlying the motion of all bodies in the Newtonian system. Values must be seen as the emotional responses of men achieving or failing to achieve what all men are impelled toward in virtue of their common humanity. If values are not intelligible in this way--and I do not now assert that they are--then the idea of an inter-cultural or trans-cultural science of society is necessarily vain. To re-state: if such a social phenomenon as industrialism may be the cause of diverse effects--as it clearly may--and if those effects are unpredictable apart from the values of those engaged in the process, then we must in each case know what the values involved are in order to make a judgment as to the probably consequences. But this would give us no more than a "culture-bound" judgment. If there are inter-cultural or trans-cultural consequences of such a thing as industrialism then it can only be because there are inter-cultural or trans-cultural connections between all human values. But this connection cannot exist. if values are essentially nothing but emotions, since emotions are reducible to individual "life-experiences" within uniquely different cultures, and as such they are incommensurable and incomparable.

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In The Political System Easton divides political theory into causal theory and value theory. I believe, however, that it follows from what has been said that there can be no causal theory apart from value theory, nor for that matter value theory apart from causal theory. On this latter proposition there does not seem to be any difference between Easton and myself. In some extremely fine passages on "The Meaning of Moral Clarity" he argues that no statement of values is meaningful apart from a demonstration of its consequences; that is, without showing the effects of which the values are essential and intrinsic causes. From this point of view the great classics--for example, Plato's Republic and Hobbes's Leviathan--serve the purpose of portraying such consequences imaginatively (and yet with logical rigor), and they show us how certain moral commitments can operate as causes in the political and moral world. By doing so they enable us to understand what we would commit ourselves to wish for if we were to adopt the preferences of their authors. This is the essential role of value theory, from Easton's standpoint. Yet however necessary such understanding is, it is insufficient for either true causal or true value theory. Unless we can understand the connections between different value systems we do not really understand the connections between their different effects. And if political theory were to culminate in true generality or universality, then it would be these very connections--the connections which transcend cultures--which we would have to grasp. But I deny that, if trans-cultural knowledge is possible--and I do not now deny its possibility --it can be knowledge of the kind obtained by the methods of the positive science, by the methods of induction, hypothesis, experimentation and generalization. Although the methods I would suggest have something in common with the foregoing, they rely primarily upon introspection and dialectic. What we can know about other cultures depends primarily, I maintain, upon what we can learn about ourselves.

Easton has argued, and argued very soundly, that a value-free social science is a delusion. Values have a determining influence upon everything

human beings do, and political scientists are human beings. Research interests are determined by values; criteria of relevance are so determined; the way in which we select our data are so determined. Most important of all, our ability to perceive social reality--and what we are capable of believing is social reality--is determined by our values. The finest passages of Easton's book are animated by this insight. Men with one set of values are acutely sensitized to one set of relationships; men with certain other values are incapable of perceiving these same relationships. In truth no one, and that most assuredly includes the scientific investigator, perceives social reality except through the media of certain values, opinions which determine what he can see and how he can see it. Perception of social reality is itself social perception, "cultural apperception" the social psychologists call it. Without having some way to judge the qualities of the lenses we use to look out upon the social or political universe, we have no way of knowing which of the unlimited number of possible universes is the universe. How do we know, for example, that our ideal of an inter-cultural or trans-cultural social science is nothing but a "value" of our culture, and that the elements in other cultures that seem to be common to all is only an illusion inspired by our desire to find them?

Easton would probably say that there is one island of certainty in the ocean of equally defensible but contradictory perspectives. That island is located by the navigational instruments of modern scientific method. The proof of the pudding is in the eating; and no unscientific culture has achieved control over the natural environment as ours has. The truth of scientific method is attested by the fact of power. We cannot help believing in the superiority of the conception of reality conveyed by modern physics, not because atoms or curved space are believable, but because these quite unbelievable hypotheses have given us an undeniable ability to work our wills upon physical nature. For these reasons, it is held, the methods which have given us power must be the true methods to perceive

Yet this ground for faith in the possibility of political science is fallacious. As noted at the outset, the physicist stands outside the system he observes. "What is physics?" is not itself a physical question: that is, it is not a question about the physicist, except in the incidental sense that his body is composed of matter and energy. But "What is political theory?" is a political question. The reasons why the physicist asks his question are irrelevant to the understanding of his answers to it. The reasons why the political scientist asks the question are fundamental to understanding his answers. The question of the political scientist is asked by a man who is himself a part of a political community, a man charged with moral commitments, with "values." Like the Socrates of Plato's Crito he is the offspring of a particular social complex, he is a child of laws. Unlike Socrates he may regard himself as an abandoned, neglected, or mistreated child, but he is a child all the same. As such he is no more a free agent in deciding how to act with regard to those laws--that social complex--by which his soul was formed, than he is free in his actions with regard to the progenitors of his body. Thanks to the dispensation of modern psychoanalysis, few social scientists today would, I think, claim any great area of freedom there. The case for political theory rests decisively upon the possibility of a trans-cultural theory of human values, and this in turn rests upon the idea of a universal human nature, the common basis of all values. We must, however, again ask ourselves: is not such an idea itself a purely cultural phenomenon? And further: is not every possible answer to the question "What is human nature?" a circular argument? For is not the idea of a universal answer implicit in the terms of the question, foreclosing the possibility that the truth does not lie in a universal,but in a particular, and that the "universal man" is the form in which "particular man" appears in our culture?

In his recently translated essay, "What is philosophy?" Heidegger observes that the form of the universal questions beginning "What is..." is Greek in

origin. We may of course ask "What is that object there?"; to which the answer may be "a tree." But when we ask, "What is a tree?" we are seeking something different from the particular object, the tree that we see with our eyes. We are seeking a universal, that to which we perforce ascribe the cause of such intellig bility as we find in the particular object we call a tree. The quest for the "whatness" of things, their quiddity, essence, idea, form, universal quality is a specific inheritance in western civilizaiion from the philosophy of which Socrates is believed to be the founder. So far as I am aware--and I believe this is Heidegger's opinion as well--questions in this form have never been asked in any other civilization; that is, they never were asked anywhere before they were raised in Greece in the fifth century B.C., and they have never been asked elsewhere except as these elements of Greek culture have been diffused. The idea of a universal human nature is part of our Greek inheritance. Implicit in the question, "What is man?" is the notion that man's "whatness" is intrinsically unconnected with any particular culture. Yet the question itself was first asked at a particular time and place in a particular culture, and there is no positive evidence, no behavioral evidence, from which the proposition implicit in the idea of the question could be validated. On the contrary, the apparent absence of the idea of universality implicit in the Greek question, from the ideas of all non-Greek (or non-Greek-infused) cultures, would make such a universality impossible to infer from positive, experimental, evidence. That is why I said before that the methods of the positive science could never establishthe possibility of theory in a science of man.

The seriousness of this difficulty may be further seen if we examine briefly the character of the Aristotelian question, "What is the polis?" As part of his way of answering,Aristotle compares human gregariousness to that of ants and bees, whose social existence is prescribed by nature, i.e. by causes external to the consciousness of ants and bees, and is not subject to alteration by the voluntary actions of the members of the beehive or anthill. Fire burns the same way both here and in Persia, but the things called just,

the things in virtue of which man's social existence is ordered, are everywhere different. Since the ordering of the polis is in this way free, it calls into activity man's rational faculties, which are required for deliberating upon the order to be prescribed. For this reason Aristotle sees man as the rational and political animal. Man's political nature requires the employment of his reasoning faculties, and reasoning supplies him with the means for ordering his political existence. Yet I think that this kind of answer--and however much it may differ in details from the actual answers of present-day theorists I think they would all give the same kind of answer--is open to grave objection. Aristotle, for example, like most western thinkers since, denies a priori that the sufficient principles for ordering man's social existence can be found in tradition. "All the survivals of the customs of antiquity are utterly foolish," he says in the Politics. What men really seek, and what they should seek, "is not the paternal but the good." However, is not the distinction between the ancestral and the good,--a distinction which implicitly denies the teaching of the Old Testament, a distinction fundamental to classical and modern political theory,-- presupposed in the question beginning "What is...?" When we ask "What is the polis?" do we not presuppose that the essence of the polis is not to be found in the particular characteristics of any particular political community? Do we not tacitly assume that there is a rational judgment, unconditioned by the unique circumstances of a particular culture, by which man can judge the true political reality, and thereby order his political existence? Is not the character of Aristotle's answer already prescribed by the character of his question, and must not every other answer to that question be similarly circumscribed?

Although western culture has never been so volatile, so un-traditional as it has been since the installation of the permanent revolution of modern technology, yet its spiritual existence has never been consciously "tradition-directed" since the spread of Greek philosophy, and particularly since the fusion of elements of Greek and Hebrew conceptions of the universal in Christianity.

However, do not many non Western/tradition-directed cultures, ancient and modern, primitive and complex, have certain greater resemblances to the ant-hill and the bee-hive than to Western culture? Should this not make us wonder whether the difference between the human and the non-human is as fundamental as certain differences between the human and the human? Indeed, must we not dare to doubt whether the category of the "human" is a permanent fundamental in any valid sense? Aristotle spoke of all the things called just being changeable. But by what right did he employ the single category "just" for the varieties of forms of gregariousness that he thereby subsumed under the "human?" Is there not in this a tacit begging of the underlying question, the question as to the appropriateness of his questions?

All political theory is either Greek, an inheritance from the Greek, or a transformation of the Greek. The questions of political theory have been traditional, authoritative for us, because we are parts of that western culture for which Greece was so decisive. How then do we know that every culture is not a kind of solipsism, from which there is no escape? Is the aspiration to trans-cultural understanding merely the characteristic of our culture? We return again to the self-same point. Yet the raising of the Socratic questions was not a cultural inheritance of Socrates, or of the mind represented to us by that name. And we cannot dismiss a priori the possibility that that mind somehow hit upon a possibility that no other mind--at least that we know of--had ever hit upon. That the true informing principle of the human soul, and of a human society shaped to give effect to the truly informed human soul, was discovered at a particular moment by a particular individual, who broke free from all that he (and possibly every other man) had been up until that moment, is not only a possibility considered, but one that is even described by Plato in the Republic. Nothing but the most earnest and critical reflection upon the nature of the experience in which the Socratic question was born can decide whether political theory, ancient or modern, is essentially a culture-bound, or

trans-cultural phenomenon. We would be false to the spirit of the Socratic question if we were to take its validity for granted. We would, I am tempted to add, be false to our own tradition.

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Let me re-state our difficulty once more. The question (or any of the variants of the question) "What is human nature?" by its very form identifies the universal in man with the rational faculty, and identifies the rational faculty with that which somehow perceives the universal. Yet the assumption upon which this question rests--in virtue of which all theory ancient or modern is legitimated--is not itself abstracted from experience in the way in which the answers to it may be. On the contrary, it seems to have been a unique experience, occurring in a particular culture, and one which has become general only by diffusion; that is, not by a repetition of the original experience but by its recollection. When we think how radically our understanding of human nature has been conditioned by our tradition, and by the authoritative character of this question as an element of our tradition, the idea of political theory must appear self-contradictory. A unique experience presents itself as inherently universal, and becomes believable as such by becoming authoritative. This difficulty is the more acute for us, it seems to me, because there is another major element within the Western tradition--namely, the Bible--in which the identification of the universal with the particular is openly maintained, and maintained in a manner that is not exposed to the objections we have raised to the Socratic questions. Let me explain.

Man, the Bible tells us, is made in the image of God. It follows from this that we cannot know what man is unless we know something of God. God is the fundamental reality, man the derivative. The idea of a trans-cultural political science, in Easton's sense, would be an absurdity from the Biblical standpoint. Not the examination of all possible relations of man with man, but the examination of the actual relations of man with God, alone could reveal the primary

underlying causes of all human moral and political existence. The record of man's encounter with God is not to be found in anthropological studies of existing societies, but in the record appointed by God himself in sacred scriptures. The notion of a meaningful separation of the sciences of man and the science of God--of revealed theology--would be impossible.

Let us consider again the question, "What is the polis?" It is important to realize that such a question could not be asked by an orthodox member of the community led by Moses through the wilderness of Sinai. The act of raising such a question would appear to him as indicative only of profound ignorance or wicked impiety: the purpose of Israel is to witness the truth of the one living God; the purpose of all other communities is ultimately to receive, from Israel, the truth of which Israel is the witness. The form of the community which is Israel, is the form impressed by the divine law, the law received immediately from God by Moses, and propounded by him to the descendants of the patriarchs. One could not accept this account of the Mosaic community and still wonder, "What is the polis?" For Aristotle's question implies that the distinguishing quality of the polis can never be identified with the characteristics of any particular community as such, just as human nature can never be inferred from the observation of any individual man, no matter how virtuous. To ask Aristotle's question in all seriousness means then, of necessity, to doubt the affirmations in virtue of which the community of Israel understood itself. The affirmations destroy the intelligibility of the question, the question expresses disbelief in the affirmations.

As I understand it, the essential tenet of Judaism is that man cannot be a law unto himself, that unassisted human reason is not a sufficient principle for the ordering of man's moral and political existence. Because human wisdom is radically insufficient, the recognition of man's radical dependence upon a being other than himself is the ultimate in human wisdom. In the Garden of Eden the serpent told Eve that if she disobeyed God, she should become as "gods,"

knowing good and evil; and he said that[17] in the day of her disobedience she would not die, as God had predicted. And the serpent, being a good theoretical scientist, was in literal sense correct. But the ability to predict--the test of a sound theory--was a false test. But the serpent, an unbeliever could not know that, in knowing good and evil, man would not become like God. For man cannot become like the Creator of the possibility of good and evil Himself, (Isaiah 48: 4-8), merely by knowing good and evil. If God could be identified with the knowledge of good and evil, then God as mere Knower could be distinguished from the object of his knowledge. Moreover, since the truly knowable as distinct from the opinable cannot change, God as knower of good and evil would be bound by his knowledge: He would not be omnipotent. He might perhaps be like the Platonic demiurge who intermediates between the eternal ideas and eternal matter; but he would not be the God of Israel, who is absolutely supreme in the universe, beside whom there is none other.

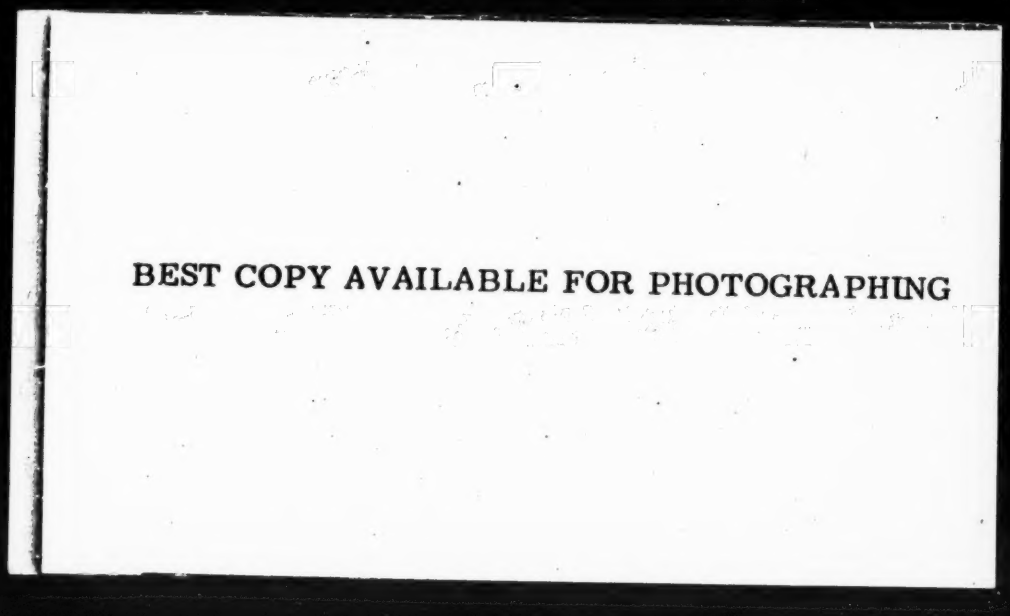
The primary fallacy of natural theology, whether from the point of view of an Aristotle, an Aquinas, or an Isaac Newton, is the affirmation of eternal, unchanging essence--that is, of an objective order that can be the subject of true theory--as lying at the heart of human reality. But if the essence of God could be known to be forever unchanging, then God would be subject to the intelligible necessity of his nature. And if man, in his rationality, participated directly in God's nature, then man could in principle have a reliable guide in the work of his own reason. There would be no radical need of man for God, for human and divine reason would be fundamentally the same--as the serpent supposed. But the Bible, by insisting that the dependence of man upon God is radical, denies in effect that the divine nature--the heart of the mystery of human life--is knowable. Man's salvation is not, in principle, accessible to him by reason. The principle of the universe, the universal par excellence, as it becomes accessible to man, and therewith his guiding knowledge, are[15] the activities of the living Lord of the Universe. His actions are not vouchsafed to such as that offspring of wonder and of pride--Socrates. For Socrates, even in the consciousness of his ignorance, discerned the grounds of his superiority

to every other man who lived. But Abraham, in his impotence (rather than ignorance), discerned the grounds of reverent submissiveness to a power higher than himself. Socrates' pride discerned within himself the grounds whereby a sufficient human life might be lived. Abraham's humility made him a worthy vessel for the disclosure by the Almighty of the means by which helpless humanity might, like sheep, receive the all-encompassing protection of an eternal shepherd.

Knowledge of God is then itself dependent upon the will of God. It is not for man to prescribe the ways in which God can be known, but for him to take up the ways God discloses in the spirit of reverent submission. God, we might say--although we would have to recognize the metaphor--could not have revealed himself through unassisted reason without implying a necessity in his nature which would constitute a denial of that nature. God as "free", as unbound by necessity, must reveal himself by an act or acts of will. Such acts must be individual acts, acts which in their impact upon human life must become known first to individual men and women. Revelation must be by miracles, by particular acts of power whereby God makes certain particular men conscious of his presence, and to that consciousness discloses the way to salvation. Contrary to Aristotle, the traditions embodying these particular experiences may not only be the oldest tradition--unknown, however, to Aristotle--but may be so far free of absurdity as to constitute the only possibility that man can escape absurdity.

I have taken the pains to express--how inadequately I am painfully aware--the problematic character of the idea of political theory. To take for granted the legitimacy of the theoretical enterprise would, I hope it is granted, be false to the skepticism in which theory itself was born. I have tried to show how difficult--if not impossible--it is that theory give a consistent account of the propositions implicit in raising the theoretical questions. I have also suggested that the idea of faith, as given in the books of Moses, is free from the besetting dilemma of theory: that the "universal" should be, in the first

instance, a "particular," flows consistently from the notion of an omnipotent God beyond all necessity. Certainly a political theory arising in Western civilization, if it is not to be merely self-contained and culture-bound, must confront the critical challenge implicit in both its Biblical and Socratic roots. The problems raised by the positive sciences assuredly cannot be solved by those sciences. They are not easy problems, but they are derivative and superficial. They can be attacked only by returning to depths from which they have sprung.


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LIBERTY, EQUALITY, AND THE DEFINITION OF JUSTICE IN AMERICAN POLITICAL THOUGHT

Cecelia M. Kenyon

Smith College

Prepared for delivery at the 1959 Annual Meeting of the American Political Science Association, Washington, D.C., Mayflower Hotel, September 10-12, 1959

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One of the conventional disclaimers about the nature of American political thought is its lack of philosophical depth and the limited range of its inquiry into fundamental ethical principles. One may rank The Federalist Papers as an excellent commentary on a new constitution, or even as a first-rate analysis of representative government, but it is not placed in the same category with The Republic or The Leviathan. Jefferson may be praised as both thinker and statesman, but he was no democratic Plato, and what is perhaps more damning, he must always bear the albatross of his debt to John Locke. John Adams may be fashioned into an American Burke, but he can scarcely be classed as an eighteenth century Aristotle. I need go no further -- the refrain is too familiar: Americans are a practical, pragmatic people, and their essential nature is reflected in the quality and character of their political thought. They have avoided serious consideration of the great questions of politics and have given their best effort to the secondary problems of ways and means.

Neither the accuracy nor the validity of this interpretation is of immediate interest to me, though it would be worthwhile at some other time to explore some of the assumptions implicit in it, such as the separability of means and ends and the primacy of the latter as an object of philosophical inquiry. Nevertheless, it is with this aspect of thought in which Americans are said to have been deficient, that I am concerned -- the ends or values of politics. Specifically, I should like to explore the implications of three of the concepts of the Declaration of Independence -- liberty, equality, and the pursuit of happiness, together with their relationship to the idea of justice. It is my general but tentative thesis that in so far as these ideas have been accepted, they have supplied Americans with a rough notion of justice but have inhibited any rigorous, precise definition of it. There is a logical as well as a temperamental or psychological reason for the absence of a liberal democratic counterpart of The Republic. This is not to argue that there cannot be justice in a democracy, or that Americans have not been concerned with the quest for it. It is to argue that as long as these three concepts are regarded as ideals or as standards for political action, American political thought must lack philosophical precision.

Because this entire paper is concerned with the definition of justice and therefore with that of the three other central

ideas, I shall not attempt to provide a ready-made set of definitions now. Some preliminary clarification is nevertheless necessary. First, of course, all three terms -- liberty, equality, pursuit of happiness -- are inherently ambiguous and have been given many different meanings in American political thought. It is not possible to argue that any one meaning is the only legitimate one for any of the three. They have been used historically in a loose sense, and it would not be appropriate for the purposes of this paper to impose on them precise definition. What I hope to do is to take what seem to have been commonly if vaguely accepted meanings and analyze the logical implications of these.

Second, it must be recognized that these ideas of the Declaration have not been accepted by all Americans, either before or after 1776. Quite apart from the ambiguity which permits men to use them in different and even conflicting senses, each of the three has been explicitly rejected as well as implicitly repudiated throughout our entire history. The politically articulate South has never been committed to equality; the Social Darwinians, led by Sumner, rejoiced in their rejection of it; Robert Lane's recent article, "The Fear of Inequality", in the Review, provides impressive information about the views of what would once have been called the Common Man -- a term whose use carries its own interesting implications. No matter what meaning is given to equality, one is forced to question the pervasiveness of its operative force in the American tradition. The same is true of liberty, though perhaps less so. At every major crisis in our history, including the Revolution itself, attempts to punish or suppress dissenting opinion have been made; recent surveys indicate that only a small proportion of Americans believe in the freedom of expression usually associated with the First Amendment, and the body of scholarly literature in support of this popular attitude seems to be growing. The third concept, the pursuit of happiness, is perhaps the vaguest of the three, but it is the one which has been adhered to most constantly. There have been exceptions, the Social Darwinians for example, and some of the contemporary conservatives (if I understand them), but by and large the politicians have tried to give the voters what they thought they wanted, and this is surely a realistic if inelegant acceptance of the idea that one of the ends of government is to secure the individual's right to the pursuit of happiness.

From all this it follows that the American political tradition must be regarded as a pluralistic one. It may be, as Professor Hartz has argued so brilliantly, that we are all Lockeians,* but there is sufficient ambiguity in Locke's doctrine to provide the basis for significant differences among his intellectual heirs. There has also been a very deep and enduring element in the tradition which I shall refer to as Hobbesian, not because it was directly and consciously derived from Hobbes, but because it was most clearly and rigorously analyzed by him. And there has been, less dominant

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* Louis Hartz, The Liberal Tradition in America, 1955.

and continuous than either the Lockeian or Hobbesian elements, a Rousseauian one. In short, the American political tradition is a complex one, and anyone who attempts to deal with it in terms of liberty, equality, the pursuit of happiness, and justice, in a short paper, must accept in advance the responsibility for inevitable over-simplification.

With these preliminary qualifications placed in the record, the central problem can now be attacked, the problem of defining justice in a political society more or less committed to the principles of the Declaration of Independence. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed." I should like to place beside this statement one not quite so famous but still well-known, that made by Madison in the fifty-first Federalist: "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit." The Declaration states that the origin of government, and by clear implication the purpose and end, is the protection of certain rights. Madison states that the end of government is justice. The problem to be analyzed is the relationship between these two statements: is the content of Madison's justice to be defined in terms of Jefferson's rights? Are Jefferson's rights defined by Madison's justice? Or is there some tension or even contradiction between the two? The answer to the first question is an emphatic yes; to the second a yes, but; and to the third, a reluctant yes.

In order to probe further into the relationship between rights and justice, one must start with a limited, selective analysis of natural law -- a social contract doctrine. The version of this which Revolutionary spokesmen used was explicitly and primarily Lockeian, with an implicit but important Hobbesian ingredient.

The most difficult concept to pin down, both in the original Locke and in the Revolutionary interpretations, is equality. In its simplest and earliest sense as used in the Second Treatise, it meant that all men in the state of nature were equally free of external authority and equally subject to the laws of nature. The suggestion is also made that all men are equally capable of knowing these laws, but Locke retreats from this somewhat when he later emphasizes the necessity of careful study. From this original equality is derived the principle that the first institution of government must rest on unanimous consent -- in other words, political equality of all individuals in the constituent act. For later generations, however, consent may be tacit and implied. Once civil society has been established, decisions are to be made by the majority. It would seem to follow, then, that a strict or literal interpretation of Locke would permit the legitimacy of political inequality among other than charter members if it were introduced by the majority. One could also argue, by extension and analogy, that Locke's justification of the unequal possession

of property, undermines the case for political equality once men have changed their original status in nature. Add to this Locke's explicit statement that the original consenters may establish forms of government other than democratic, and the residue of natural equality carried over into organized society is unknown and undefined. Clever fox or sloppy thinker -- Locke was the classical chameleon of politics.

He was not known as such by his American disciples, and they were more aware of the equalitarian implications of his doctrine than of the qualifications he gave it. This is true, I think, whether they were committed to or opposed to these implications. Virginia aristocrats in 1776 recognized some disparity between the language of their Bill of Rights and their position as slave-owners, and were not altogether comfortable about it. Madison could not quite reconcile his belief that just government required restriction of the suffrage or some other institutional means of protecting private property with his belief that the principles of representative government required that those without property have some voice in determining the laws. I would not argue that the Americans of '76 and '87 were doctrinaire, but they were sufficiently systematic and honest in their thinking to recognize a possible inconsistency when they saw it. The adoption of manhood suffrage for election in some states for the ratifying conventions of 1788 can be interpreted as a sincere and astonishingly literal attempt to adhere strictly to the equalitarian and consensual provision of the social contract. And of course there were a considerable number of people who were committed to a translation of Lockeian natural equality into continuing political and civil equality in organized society. This view ultimately prevailed, and I believe one of the reasons it did was that as Locke became popularized he also became simplified. The American Locke was much more equalitarian than the real Locke, even to those who were fearful of equality. This made it easier for their opponents to win, for during the early years of the republic Locke's prestige was too great for a critically selective use of his doctrine.

Thus, although the meaning of equality was not completely precise, and whatever it meant, there was much opposition to it, I think one can say at least this. It meant for many Americans a right to share in the governing process, or more simply, to vote. It meant a republican form of government, and for some, a democratic one. This was not inconsistent with Locke's Second Treatise, but neither was it required by it. Why, then, did the Americans carry Locke's principle of equality so much farther than he did?

There are many parts to the answer, some of which were not ideological. One was, and it is the one I should like to discuss here. I would argue that it was a Hobbesian element in the thinking of Americans which, when combined with the Lockeian doctrine, led naturally to a belief in political equality and republican government.* This was the concept of self-interest. It was of

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* Again I should like to emphasize that I am using the term Hobbesian as a convenient label and not to suggest a direct influence.

course present in Locke's theory as one of the factors which rendered the state of nature uncomfortable, and as a part of Locke's case against unlimited government. But it was the very core of Hobbes's theory, and it was almost equally central in the political thought of eighteenth century America. Man's egoism was first lamented and then resignedly recognized in New England Election sermons. Otis, Dickinson, Wilson, and both Adamses assumed self-interest as a primary political motive in the period between 1763 and 1776. The same assumption was prevalent during the Federal Convention, and on both sides during the ratification debate. Jefferson, idealist and optimist though he may have been, took it for granted without turning a hair. The belief that men in politics seek their own interest, that they may be affected with a lust for power, that no one is to be trusted to act according to the dictates of justice or the common interest, was so pervasive and was reiterated so frequently that the modern reader wearies of its repetition even while he admires the concept as a safeguard against sentimental idealism. This was the concept which pushed the Americans on to an increasing realization of equality in political practice. Had they not been such good Hobbesians, they would not have been such good republicans. It was an intriguing conjunction of a realistic view of human nature intensifying the commitment to an ideal.

If men are primarily egoistic, then the Lockeian-Jeffersonian rights to life, liberty, property, and the pursuit of happiness can hardly be secured to each man unless each is empowered to enforce them for himself, in civil society as well as in the state of nature. The American version of the social contract was not pure Locke, but Locke salted with Hobbes. The colonial case against the British theory of virtual representation, for example, emphasized the necessity of giving each segment in society the power to protect its interests against attacks from groups with different and opposing interests. The early republican theory of representation, that the legislature should be an exact miniature of the people, did likewise -- as did also, for that matter, the Adams defense of bicameralism and Hamilton's famous speech of June 18th in the Federal Convention. The Americans retained as a crucial idea the assumption that the same egoism which had driven men from the state of nature into civil society would continue to operate after the transition, and would have to be guarded against. * Otherwise neither justice nor the rights of man could be secured.

Had the end of government been something other than the protection of man's natural rights to life, liberty, property, and the pursuit of happiness, then the Hobbesian element would not have edged the Americans toward emphasizing the equalitarian aspect of Locke. If the end of government were virtue, or the common good, or national glory, then it could be argued that some people in society were more capable of directing all toward this end

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* Locke also had recognized the existence of factions in society but made no particular provisions for them.

than others. But the doctrine of natural rights is a philosophical justification of the pursuit of self-interest. Rights are interests made legitimate. It was ethical egoism -- in Locke, and even more so in American thought. Here, as with the concept of equality, the Americans pushed a Lockeian principle farther, made it more explicit and definite, and produced something substantially different from the original doctrine. If the ends of government are the protection of individual rights or interests, if all men are predominantly selfish, then the ends cannot be secured by entrusting government to a small group even though that group be endowed with superior wisdom. Power must be shared by all,not merely in the constituent act, but in the continuous operation of the government. Locke avoided this conclusion,but the Americans' greater emphasis on man's selfishness gradually forced them closer to it.

A different emphasis with respect to the rights to be protected was also involved. For Locke, the central and typical right was property. To be sure, he used the term in its medieval sense to include life and liberty as well as estate, but even so, his concern with property in the modern sense stands out. This was much less true of the Americans. I am not suggesting that this right was not generally valued, or that for some it was not still the primary one. But a goodly number ranked it as a secondary one -- John Dickinson, for example, and of course Jefferson. For that matter, where would Patrick Henry have gotten if he had cried, "Give me property, or give me death!"? If property was the word that came most naturally from Locke's pen, liberty was the one congenial to Americans. This was not merely a linguistic difference. For one thing, it faciliated the movement toward equalization of political power. Most of the opposition to this movement came from those who feared that it would result in an infringement of their right to property. They would surely have fought much harder if the case for the extension of the suffrage had been made in terms of men's equal right to property. But they were sufficiently committed to the doctrine of natural rights to find it difficult to deny men an equal right to liberty.

The implication with respect to a definition of justice of a stress on liberty rather than property is also significant. It makes justice much more difficult to define. At least it does so if liberty means what I think it did mean to Locke and to the eighteenth century Americans. It was not license, as they were wont to say, but neither was it living by laws made in accordance with the General Will, as in Rousseau, but something in between. It was associated with the concept of rule by law, but it carried with it a connotation of an absence of law or external restraint -- an area in which the laws ought not to operate. It meant the right to direct one's life and pursue one's interests more or less unrestrained as long as one did not seriously interfere with the same right in others, or disturb the peace,or otherwise jeopardize the common good. A most unsatisfactory concept, if what one wants is precision of definition. This is especially true if this concept is held in conjunction with the Hobbesian assumption that men are constitutionally egoistic and that their pursuit of self-interest necessarily results in conflict and competition. What

principle can govern a just resolution of such conflict? Madison groped for the answer in the tenth Federalist and found it largely in necessitous compromise. Compromise would prevent action which would be injurious to the rights of others or to the permanent and aggregate interests of the community. However, as Professor Robert Dahl has pointed out in his brilliant and acute analysis of the theory, Madison offered no criteria for defining these individual rights and community interests. I suggest that it was logically impossible for him to do so. Given the assumption that 1) men have a right to liberty, 2) each man's right is equal to every other man's, 3) the exercise of this right will inevitably produce conflict, there can be no principle derived from natural rights doctrine itself, which can provide a substantive standard of justice. Such a standard must come from an external source -- some conception of virtue or God's law. But this is no answer either, since it raises the ancient question, who is to interpret God's law? If, as Madison believed, men have a zeal for different religious opinions. Even if this problem could be solved, the "external" justice would have to embody the principle of liberty if it were not to be inconsistent with natural rights doctrine, and this opens the original problem.

If one turns from liberty to the third right listed in the Declaration, the difficulty of giving a precise definition of justice appears even greater. If Jefferson substituted the pursuit of happiness for property as the last of the trilogy merely because it sounded better, then much of the argument that follows is irrevelant as far as the original intent and meaning of the Declaration is concerned. I do not believe that the substitution was merely stylistic however, because it changed the meaning so substantially. Again it was an instance of a Hobbesian element grafted on to the primary Lockeian foundation. Hobbesian happiness was satisfaction of the passions, these being defined so broadly as to include nearly every form that individual self-interest may take -- from hunger to the desire for knowledge to the desire of good for others. Furthermore, Hobbes argued, all men do not have the same passions, nor does one man have the same passions throughout his life. The passions themselves are variable, and what is constant is man's desire for satisfaction of them.

None of this was spelled out in the thinking of Americans during the Revolutionary era, and they would probably have been shocked at the notion of having anything in common with Hobbes. They might have associated happiness with virtue, or self-realization. But in as much as this right to the pursuit of happiness existed in association with liberty and equality, I think either the Hobbesian concept or something very close to it was the only logically appropriate one. Every man must enjoy the right to pursue happiness in his own way as long as he does not seriously infringe on the rights of others or commit an act contrary to the common good. But how define these limitations justly? The difficulty is the same as that with the right to liberty. If every man has an equal right to pursue happiness, then there cannot logically be any hierarchy of happinesses. The common good must include the protection of this equal right, and again we are back where we started from: there must be some standard external to

the doctrine of equal rights but also embodying this doctrine. Hobbes's recognition of the difficulty led to his very narrow definition of justice -- the keeping of covenants, and/or legality. Furthermore, he regarded justice as a means and not an end, the end being peace and commodious living.

Of course, the concept of natural law from which the concept of natural rights developed was supposed to provide the standards of justice. There was to be found in nature an objective morality, ascertainable by the use of man's reason. Man's natural rights were to be exercised in accordance with and subject to these natural laws. This was the original doctrine of Locke, and it had not been consciously rejected by the Americans. My argument is that they had undermined it substantially and irreparably without quite realizing what they had done. The ethical and political egoism implicit in positing the protection of individual rights as the end of government overshadowed the restraints and obligations implicit in the older concept of law. Furthermore, the skepticism regarding man's reason which was so prevalent on this side of the Atlantic, combined with the protestant impulse which was as operative in secular as well as in religious spheres, tended to erode belief in the possibility of universal agreement on the content of natural law, and therefore to weaken the concept as an ethical imperative. Similarly, the acceptance of the idea that conflict between man's self-interests is natural and probably inevitably contributed to the process. The American conception of human nature, and of the state of nature, was as much Hobbesian as Lockeian, but they differed from both of the great contract theorists in believing that the transition from nature to society worked no really great transformation. They did not follow Hobbes in his interpretation of natural laws as rules of reason calculated to secure self-preservation and commodious living, but their Hobbesian view of man and nature made the older and also Lockeian concept of law not a good fit. The Lockeian natural law was premised on the assumption of relatively harmonious society, whereas the Americans assumed man's egoism led naturally and inexorably to conflict. They did not abandon their allegiance to this concept, that is to the Lockeian concept, but it became more formal and less vital.

Finally, the emphasis on equality, on rights, and especially on the right to the pursuit of happiness, carried with it an increase in will as opposed to reason as an element in political decision. Rationalism and ethical egoism are not necessarily or logically incompatible, but there is some tension between them. This was recognized and expressed in Locke's explanation that men leave the state of nature because they are not good judges in their own cases, and in Madison's use of the same argument in the tenth Federalist -- "his interest would certainly bias his judgment..." Reason, at least the kind by which it was believed men could discover the laws of nature, was associated with a belief in and respect for an objective order. Equalitarian egoism tends to elevate the value of the subjective, and this in turn increases the value placed on will. There is a greater tendency to accept the will of the people not because it is "right" in the sense of conforming to some objective or rational standard, but because the

people have a right to will what they will.

It would be ridiculous to argue that the Revolutionary Americans went so far as this. Not even Tom Paine did so. They retained belief in some external standard, in some objective justice which a reason not biased by self-interest might discover. Yet they could not define it, and one of the reasons was the acceptance as a legitimate end of government of that very self-interest which interfered with reason.

The tension between the individualistic, egoistic implications of natural rights theory and the pursuit of justice was reflected in several of the characteristic attitudes of late eighteenth century Americans. It was an element in the distrust of majorities and of majority rule shared by almost all groups, no matter what their class status or sectional loyalty. Majorities were, after all, composed of men who were egoistic. It was therefore to be expected that they would violate the natural rights of individuals or of the minority if it was to their interest to do so, or be led by passion and interest to reject that objective justice to which unbiased reason and uncorrupted virtue would otherwise have led them. The Americans could have reconciled their belief in individual rights with a belief in unlimited majority rule if they had assumed that the interests of all Americans were identical and would be equally affected by any laws that might be passed or if they had assumed that the members of the majority would act virtuously. They made neither of these assumptions and therefore could not place full confidence in the justice of the majority rule.

The same tension was involved in the distrust of faction and party, and helps to explain why the American conception of party differed substantially from the British.

I have suggested earlier that there was a relationship between the egoism of American natural rights theory and the American theory of representation. The colonial argument against British "virtual" representation assumed the existence of different interests within the Empire and the consequent necessity for effective representation of each. This conception of "actual" representation was subsequently broadened to mean that each major interest in the community should have expression and power in the legislature. The latter was therefore clearly regarded as a body whose operation would be affected by, if indeed not determined by, separate group and private interests. If it was accepted as inevitable if not legitimate that this should be so, it is rather difficult at first glance and from a purely logical standpoint to see why Americans should have had such strong feelings about party and faction. These surely were but organizational techniques for making the representation of group interests effective. To view them as reprehensible seems both illogical and unrealistic, given the double assumption that men in politics act from self-interest, and that one of the purposes of government is to secure the rights of life, liberty, and the pursuit of happiness. Yet if one regards the Revolutionary generation as still committed to a belief in justice or a public interest detached from natural rights egoism, then the opposition to faction and party may be seen as a reflection

of this view. It was a hold-over from the older conception of a corporate public good asscciated with an objective justice. The constant condemnation of party and faction was a way of paying tribute to an ideal of both political unity and virtue in the sense of Machiavellian public spirit or Rousseauian general will.

Thus the American interpretation of the social contract, and of its implications, involved a combination of elements from the doctrines of its three great expositors. From Locke, and by direct and conscious influence, the emphasis on rights; from Hobbes, but by independent development, the emphasis on equalitarianism and egoism; from Rousseau, again by independent development, the recognition that a contradiction between private interest and public interest would jeopardize the attainment of just government when sovereignty had been transferred from a monarch or an aristocracy to the people themselves. Because of the Lockeian and Hobbesian elements, the American solution could not be the radical subordination of private to general interest required by Rousseau. It remained during the classical era, one of practical compromise based on philosophical ambiguity.

Thus far, after the introductory remarks on definitions and exceptions, I have written as if the ideas analyzed above were shared by all Americans at the time of the Revolution and for the quarter-century thereafter, as if they were the product of some corporate American mind. It was necessary to do so in order to avoid cluttering up the analysis itself with distracting exceptions and reservations. I do believe that the natural rights doctrine with Hobbesian and Rousseauian strains was accepted by the majority of articulate thinkers at the time, and that it was central to the corpus of Revolutionary and early Republican thought. It was the doctrine of the center on the political spectrum, and the center extended very far toward both left and right. But there were important exceptions, and a brief look at these may clarify the major doctrine as well as the deviations.

Neither Paine nor Hamilton accepted the egoistic implications of the natural rights doctrine emphasized above.* Both in turn were rejected by the overwhelming majority of the country which each had served with selfless devotion. Their careers, though one was of the left and the other of the right, were remarkably parallel. Both were immigrants, and alien to the political experience and culture of colonial America. Each came as a man without status. Each was almost immediately swept up in the patriotic fervor of the last crisis in imperial relations. Each was essentially a political person, finding fulfillment in public service rather than in private life. Neither was capable of accepting with equanimity the political behavior they observed among their countrymen -- motivated as it frequently was by considerations of self-interest. Paine did not see that the natural rights of which he wrote so eloquently were justifications of this, and he

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* I have discussed Hamilton's rejection of it at some length in "Alexander Hamilton: Rousseau of the Right", Political Science Quarterly, June 1958.

continued to regard these rights as the proper end of government. Hamilton, if he did not reject the doctrine outright, ceased to accept it as a working philosophy and substituted instead a more nearly Machiavellian end of government, national unity, strength, and glory. What neither Paine nor Hamilton ever really understood was that Americans were private persons first and citizens second, and that for them politics was a means and not an end. They would have felt completely ridiculous, for example, had they stalked around after 1776 calling each other "Citizen", in the fashion of the French Revolutionaries a few years later. The natural rights philosophy, with its egoism tempered by a sense of objective right or justice, was admirably suited to their inclinations. It was far less ambiguous than the original Locke, but still sufficiently roomy to accomodate diverse views and interests, and to facilitate compromise based on interest rather than on principle.

Admirable as such a philosophy may be, it nevertheless was subject to the normal fate of political theories that are inherently ambiguous. There is a tendency to reduce the ambiguity by emphasizing one or more of the elements at the expense of others, in order to achieve greater simplicity and greater certainty. The result is usually a more doctrinaire complex of ideas. I believe that this is what happened to the natural rights philosophy, and that it was the primary trend in nineteenth century political thought.

An increase in doctrinaire qualities is to be seen in a number of instances during this century: in the thought of John Taylor; in much of the anti-monopoly doctrine and rhetoric of the Jacksonian Democrats; in pro-slavery thought and in abolitionist anti-slavery thought; in the glorification of "the people" which accompanied the democratization of state constitutions during the second quarter of the century; in the extreme laissez-faire Social Darwinism of the last quarter; in certain aspects of Populist and Progressive thought -- especially the sharp dichotomy frequently drawn between "The people" and "the interests", and in many lesser movements ranging from the philosophical anarchy of Henry David Thoreau to the Marxist socialism which finally claimed Eugene Debs and Henry Demarest Lloyd. It may be true, as Daniel Boorstin has argued so persuasively, that the genius of American politics lies in its avoidance of the doctrinaire. But I believe that this is true of the method and of the product, not of all the ingredients. Americans have not been immune to the appeals of clear and simple doctrine, for such doctrine is intellectually more comfortable than one requiring the constant adjustment of values, which the eighteenth century natural rights theory did.

There is not time here for an interpretation of the whole of nineteenth thought, but I should like to push my argument a little farther by cursory examination of two of the movements referred to above: Jacksonian Democracy and Social Darwinism. Neither was negligible in its influence, and both were characteristically

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American though one may wish that they were not. The first accepted the traditional values, the second rejected at least two of them if not all of them.

The earlier natural rights doctrine, as I have argued in the preceding pages, could not supply a clear definition of justice or provide an easy formula for securing just government. Its egoism and equalitarianism both forced an acceptance of majority rule based on a broad suffrage, but led also to the belief that the majority might violate individual rights or the general welfare -- in other words, behave unjustly. It requires either apathy or considerable intellectual toughness to accept such a philosophy of imperfection. The Jacksonians modified this doctrine by identifying justice with the interests of "the people", and attributing self-interestedness to the "paper aristocracy", the Bank's supporters, the parties, or politicians. Their view of society was not the complex pluralism of Madison's tenth Federalist, but a much simpler one consisting of "the people", a collective and somehow beatified entity, and the few who were possessed of sinister interest and unnatural power. The power was unnatural because it was based on special privilege secured in biassed legislation. The receipe for justice was simple: remove the legal privilege , and natural equality would be restored -- along with accessory virtues of simplicity, frugality, and, of course liberty. * This is doctrine strongly reminiscent of Rousseau. It has the strength of an appeal to nature, and the attractiveness of dividing the real people into "the people" who are righteous and the artificial aristocracy who are not. (It is also reminiscent of Hamilton, with the roles of the participants reversed.) Follow nature, and liberty, equality, happiness, and justice, will be achieved. The Jacksonians eliminated the tension implicit in the older doctrine by localizing egoism primarily in one group, and by submerging the quest for objective justice by identifying it with the interests of the majority who wanted only to restore the natural order.

The Social Darwinians had much in common with the doctrine used by the Jacksonians to fight the Bank and other groups believed to be especially privileged. They also saw themselves engaged in a fight to prevent legislative interference with the natural order, and they also tended to identify justice or the public interest with this order. However, they recognized not only tension but outright contradiction in the value of both the Lockeian and even more, the American doctrine of natural rights. Neither equality nor individual happiness was essential to justice, and neither was a legitimate end of government. The egoism implicit in the older philosophy was here made nakedly explicit, but by disassociating liberty from equality and the pursuit of happiness, it was unleashed and therefore radically changed. Even liberty would seem to be not an end but a means, the true end being the

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* See the brilliant analysis in Marvin Meyers, Jr., The Jacksonian Persuasion, 1957.

survival of the fit and the ultimate perfection or at least improvement of the race. This repudiation of the values of the Declaration of Independence and of the authors of the Constitution was as complete as that of the Southern defense of slavery, though perhaps not as obvious or dramatic. That the operative effectiveness of the doctrine was of relatively short duration is perhaps evidence of its lack of realism in a society ruled by the majority and founded on the assumption that the members of that majority were not only egoistic but had a limited right to be so.

The singular extremism of Social Darwinism ethics stands in sharp contrast to the pluralistic value system of early natural rights doctrine. So, too, does the Jacksonian emphasis on equality as the prerequisite and guarantee of liberty, happiness, and justice. All three doctrines, on the other hand, are alike in one respect. For none of them is justice a primary, independent value to be pursued directly. It was instead a secondary value, one which was indentified with the realization of one or more of the primary values, or one which at least involved such realization. The persistent, conscious political goals of Americans have been the Lockeian one of liberty, the Hobbesian ones of peace,happiness, and commodious living, and the Rousseauian one of equality.

If any one of these three is valued exclusively or in an extreme way, the result will not only be a doctrinaire theory, but one that is not compatible with the principles of liberal democracy. If liberty is the sole value, as it was for the Social Darwinians, then the will of the majority may be so severely or extensively limited as to deprive it of the power to govern. If happiness is the supreme value, then liberty may be sacrificed, as it was by Hobbes. If equality is ruthlessly pursued, both the liberty and happiness associated with individualism may be lost. All three values must be honored to maintain a political system subject to the ultimate control of the majority and having as its principal end the attainment of individual, and individually defined, self-interest.

It would therefore be possible to define justice for a liberal democracy as an ordering of or harmony among these three ideas: liberty, equality, and happiness. The form is Platonic, and the content implies the Aristotelian principle of moderation. Yet the mere reference to these theorists exposes the unsatisfactory character of such a definition. It is not an objective one, but relative to values already accepted, and standing moreover in the relationship of means to ends.

I believe that it is preferable to recognize that there is no way of defining justice in a pluralistic society committed to the pursuit of individual liberty and happiness. This pursuit recognizes the validity of diversity in values, a limited egoism in practice, and the exercise of will as well as reason. It was impossible for Plato to define justice without rejecting all three of these elements, and it is very likely the same for us. Though it cannot be defined, it is nevertheless a concept that cannot be rejected. It serves as an indispensable symbol of the ideal of

rational judgment and ethical obligation, and therefore as an internal restraint on the egoistic elements inseparable from the philosophy and operation of liberal democracy. It was in form what Hobbes deduced -- not an end in itself, but a means essential for the attainment of the good society.

PROGRESS IN DEFENSE ORGANIZATION

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PROGRESS IN DEFENSE ORGANIZATION

1. GOALS

Any experienced bureaucrat knows that periodic reorganizations are a standard feature of governmental life. Since its creation as a National Military Establishment in 1947, the renamed Department of Defense has had its fair share of reorganization. The motivation for carrying through the last major reorganization, which took place in the spring of 1958, was the launching by the Soviet Union of the first earth satellite, the Sputnik, in the fall of 1957; although preparation for reorganization was already underway before Sputnik was launched. Soviet Union pioneering in the battle for control of space prompted the President of the United States to admit that the American military development program was lagging. The President pledged action to overcome some deficiencies in our programs.

In his State of the Union message of January, 1958, the President listed defense reorganization as one of the major items confronting this nation which required urgent action. On April 3, 1958, the President transmitted to the Congress his recommendations relative to strengthening the entire defense establishment. This message reviewed the reasons why a further modification in Defense Department organization was essential. The proposals in this message reflected the continued thrust toward greater authority for the Secretary of Defense and greater integration of effort between the three military services. Many of the arguments which had been advanced in previous Defense Department reorganizations were cited in support of the additional measures which the President recommended to Congress last year. In particular he stated: "We cannot allow differing service viewpoints to determine the character of our defenses -- either as to operational planning and control, or as to the development, production, and use of newer weapons. To sanction administrative confusion and inter-service debate is, in these times, to court disaster. I cannot over-emphasize my conviction that our country's security requirements must not be subordinated to outmoded or single-service concepts of war."

The recommendations which the President advocated were designed to achieve, among other things, the following: Unified strategic planning; formation of unified commands; streamlining of military command channels; increased professional military assistance for the Joint Chiefs of Staff; strengthened control and supervision by the Secretary of Defense over military research and development; increased flexibility in the management of defense funds by the Secretary of Defense; clarification of the authority of the Secretary of Defense to enable him to function as a fully effective agent of the President as Commander-in-Chief; and reduction in service rivalry and controversy.

The examination here of progress in meeting the goals of the most recent Defense Department reorganization and the analysis of continuing problems is recognized as suffering from a degree of superficiality in many areas.

However, the nature of this paper is designed to indicate trends in organization and the general scope of the problems with which it is principally confronted. It is hoped that a paper of this nature will serve to provoke effective discussion, rather than be viewed as a definitive analysis.

II. REORGANIZATION: WHAT HAS HAPPENED

The Department of Defense Reorganization Act of 1958, effective 6 August 1958 (Public Law 85-599), authorized most of the recommendations made by the President, which required legislative action. Subsequently, the Defense Department staffs have been engaged in a long process of internal administrative adjustment to put them into effect.

It is almost too early to judge what has actually been accomplished as a result of the reorganization measures initiated in the summer of 1958. The incorporation of legislation and Presidential directives into internal changes in staff composition and size, modified working relationships and command channels, and precise language of new directives to delineate functions and responsibilities within the Department is just being completed. Consequently, operations under the new organization are difficult to evaluate and definitive judgments are premature. Furthermore, in the limited nature of this paper it is impossible to give adequate treatment to all details of developments and some degree of superficiality, unfortunately, must be accepted in this paper.

To what extent have the reorganization objectives and measures proposed by the President been realized? Except in some significant areas the specific measures set forth in the President's message to the Congress have been achieved. Although the measures desired by legislative action and by Presidential directive have been largely attained, short-falls in realizing the objectives of those measures are evident in two crucial areas: (1) service rivalry, and (2) strategic planning and operations.

Service Rivalry

A major goal of the President was to reduce sharply the tendency toward Service rivalry and controversy. Yet it would be difficult to claim that the reorganization to date has successfully reduced inter-Service rivalry. Admittedly, this rivalry is sometimes magnified to the public eye by reporters who exploit it excessively as good headline material. Further, there is some truth to the claim that this competition can be beneficial in terms of more efficient management and speedier technological advance. However, the intensity of rivalry continues with serious detrimental effects. The reorganization proposals directed toward assuring the unchallenged authority of the Secretary and expanding the role of the Joint Chiefs of Staff actually served to exacerbate Service fears. Increased power in the hands of the Secretary and the JCS necessarily detracted from the independence of the individual Services. As the centralization of power increases in the Pentagon each Service uses all possible internal and external channels to make sure that its views receive adequate weight.

One of the major controversies during the Reorganization Act hearings concerned the proposed legislative language for giving strong authority to the Secretary to transfer, reassign, abolish or consolidate functions of the Department. The Congressional Committees balked at the broad authority proposed for the Secretary, primarily because of its potential application to "major combatant functions" which could strike at the roles and missions assigned to forces of each Service. A compromise on the final language gives either house of the Congress the power to prevent by passing a resolution, action by the Secretary to exercise his wide prerogatives, except in a situation of hostilities or imminent hostilities as determined by the President. The Act also provided that a Service secretary or chief of staff, upon having informed the Secretary of Defense, could present such an issue, or in fact "any recommendations relating to the Department of Defense," to Congress on his own initiative.

It is clear that the Congress has a continuing interest in preserving a considerable degree of Service independence. In part this reflects the legitimate concern of the legislative branch for preventing too great a centralization of power in the military establishment of the executive. It can also be attributed to a great extent to traditional Congressional desire to maintain as great an influence as possible in the general operations of the Department. This Congressional attitude which encourages expression of parochial Service views is the most influential counter to the authority of the Secretary available to the military Services.

Strategy Planning and Operations

Despite these caveats, the President's reorganization proposals for achieving unity in strategic planning and in military operations have been realized to a great extent. The fighting forces have been organized into unified and specified commands. Command channels from the Commander-in-Chief and the Secretary of Defense to the fighting forces have been streamlined. The organization of the Joint Chiefs of Staff has been strengthened to improve the procedures for strategic planning and operational direction of the unified commands. Most of the organizational changes in these areas were accomplished through Executive action. Whether or not the measures can achieve the desired objectives will be known only after further time elapses.

Under Department of Defense (DOD) Directive (5100.1), the major components of the Department are defined as the Office of the Secretary of Defense, the Joint Chiefs of Staff, the military departments and the military Services within those departments, the unified and specified commands, and such other agencies as the Secretary of Defense establishes to meet specific requirements. This definition reflects the increased prestige and authority given the JCS under the reorganization, [redacted]. The prestige of unified commanders has been increased by making them directly responsible to the President and the Secretary of Defense.

DOD Directive (5100.1) specifies that the chain of command "runs from the President to the Secretary of Defense and through the Joint Chiefs of Staff to the commanders of unified and specified commands." This terminates the procedures whereby one of the military departments served as "executive agent" for each unified command. Thus, the JCS have assumed responsibilities for serving as advisers and military staff in the chain of operational command to the unified commands and for directing operations conducted by these commanders, in addition to preparing integrated strategic plans to guide the operations of the fighting forces.

The military departments continue to organize, train, and equip forces assigned to unified or specified commands. A unified commander communicates with individual military Services on matters of administration, personnel, logistics and communications, but with the JCS on strategic and logistic plans and on strategic operational direction of assigned forces. The commander has been given increased authority over the planning and support functions of the forces assigned to his command from the Services, in order to minimize the past experiences whereby the Services could unilaterally influence the planning and capabilities of the command to their own ends by the manner and degree of support provided to the assigned forces. The organizational changes have increased the ability of the unified commanders to bring their advice and influence to bear on decisions at the Secretary of Defense level. However, there remains strong individual Service influence over the budget recommendations of the unified commanders, since the individual Services prepare proposed military budgets for submission to the Secretary albeit on the basis of recommendations from the unified commands.

The Reorganization Act raised the ceiling on the Joint Staff from 210 to 400, and authorized the Chairman (as opposed to the JCS as a whole under previous arrangements) to assign duties to the Joint Staff and to appoint the Director of the Joint Staff with the approval of the Secretary. By executive action the internal structure of the Joint Staff has been modified to enable the Joint Chiefs to consider a "joint" as distinguished from strictly Service views. Despite the strengthened staff and improved organization of the JCS, there has been considerable difficulty in practice in achieving the desired unity in strategic planning. Under the previous system the Joint Staff was composed of groups, each with equal representation from the Services, which prepared plans and other documents for the JCS as a staff representing the JCS rather than the Services. These documents were reviewed by committees composed of officers specifically representing the Services prior to consideration by the JCS themselves. Under the new system individual action officers, or teams, of the appropriate Joint Staff Directorate are to prepare documents for the JCS, likewise on a basis independent of any given Service view. In practice, however, Joint Staff officers often tend to insure that the views of their respective Services are presented in one way or another. When the document reaches the JCS agenda, the Services have again an opportunity to introduce their own particular viewpoints. Furthermore, the members of the JCS are still the chiefs of their respective Services, and staff officers are reluctant to recommend to their chiefs a position on a JCS paper which could weaken the prestige or interests of their Service vis-a-vis the others.

Under these current conditions, "split" papers continue to reach the Secretary in the form of Service "splits", as opposed to clear delineations of alternative strategic doctrines and priorities of action for meeting the global military tasks confronting the U.S. The potential for achieving greater unity of planning, however, is present in the reorganized Joint Staff. Trends toward a more objective viewpoint independent of Service "slants" exist there. Much will depend upon the objectivity of the Directors in the Joint Staff and the Individual Chiefs of Staff as to how the trend will evolve. On the other hand unity in operations has definitely been enhanced by introducing the JCS into the command line and the clarification of command channels.

Budget Authority of the Secretary of Defense

Another area of shortfall in achieving the goals of the President's proposals of April, 1958 is that of appropriations and budget control. Both legislative and executive actions were proposed, but both were delayed. The original proposals were designed to enhance the Secretary's ability to assure sound management of the annual $40 billion programs of the Department which require efficient and effective direction if our national security is to be maintained. To a considerable extent, however, they also dealt with the problem of enhancing the Secretary's authority over the military Services to assure unified direction and integrated policies within the Department.

The President's message of 3 April to the Congress stated the general objective of making future appropriations to the Department in a manner which provided the Secretary with "adequate authority and flexibility" in his direction over the use of Defense appropriations. An implication that he ultimately sought lump sum appropriations with wide discretionary powers for the Secretary brought sharp objections from the Congress and other quarters. As a result, the Administration denied that this radical change was sought, and stated that it would postpone most of its specific recommendations until submission of the FY 1960 budget.

As presented in 1959, the Defense Department Budget for FY 1960 took partial steps toward achieving the President's objectives. (See below III B "Allocation of Resources"). However, the Secretary and the Comptroller still rely heavily upon exercise of limitations and restraints upon use of funds by the military departments, rather than increasing directive authority over expenditures to the extent implied in the President's message of April 1958.

Central Authority over Research and Development

The reorganization of control over research and development emphasized so strongly in the President's message of April 1958 has largely been realized. The Reorganization Act of 1958 established the recommended Director of Defense Research and Engineering with strong authority and with a rank just below the Secretary, the Deputy Secretary and the Secretaries of the Military Departments. By law he is 1) the principal adviser to the Secretary on scientific and technical matters; 2) to supervise all research and engineering activities in the Department; 3) to direct and control (including their assignment or

reassignment)research and engineering activities that the Secretary determines require centralized management. The Secretary or his designee (e.g. the Director of Defense Research and Engineering) is authorized to engage in basic and applied research, and funds are appropriated directly to the Secretary for this purpose.

In practice, this broad authority of the Director is being applied to the President's stated objectives of strengthening the Secretary's control over R & D organization and funds to make it unchallangeable. The great reliance placed on the Director by the Secretary and the Deputy Secretary means that he, more than any other single individual in the Department, determines the nature of future weapons systems. The administrative problems in defining the detailed functions and organizational relations of this office to others have delayed full realization of its effectiveness in achieving the Presidential directives of eliminating unpromising or unnecessarily duplicative programs and assuring that R & D programs conducted by the military departments are effectively integrated and fully meet the needs of the operational commands. The President also expected the Director to see that unnecessary delays in decision-making are eliminated, that lead-times are shortened and that a steady flow of funds to approved programs is assured. The problems confronting the Department in these areas are examined more fully below (See III.C"Lead-Time in Weapons Development").

Role of the Assistant Secretaries of Defense

The ability of the Secretary to use effectively the increased authority placed under his central control by the reorganization depends heavily upon the staffs supporting him under the Assistant Secretaries in the Office of the Secretary of Defense. The impact of reorganization measures on the role of the Assistant Secretaries of Defense can be illustrated through examination of the experience of one of them, the Assistant Secretary for International Security Affairs.

The politico-military nature of many "peace-time" military operations in the Cold War has brought the Secretary of Defense a major responsibility for assuring close coordination between the plans and operations of his Department with the Department of State. To provide the essential staff support for this responsibility he has established the Office of the Assistant Secretary of Defense for International Security Affairs (OASD/ISA). In addition to coordinating State-Defense relations on mutual problems on a day-to-day basis, this staff supports the Secretary on matters before the National Security Council and the Operations Coordinating Board, and is charged by the Secretary with the overall direction and management of the Military Assistance Program. In all of these activities, close coordination between actions by Defense agencies and the State Department is essential if the military and political objectives essential to our national security are to be gained. In a Cold War characterized by constant emphasis upon relative power positions and sustained imminence of hostilities, integrated political and military action is essential.

It is in the area of achieving this necessary coordination of Defense actions with State Department actions that difficult problems arise for Defense Department policy and command channels. Proposed actions by the unified commanders with significant international political overtones are forwarded by the JCS to the Office of the Secretary for coordination by the Office of the ASD (ISA) with State. Usually, this is after some time has elapsed in processing the paper through the Joint Staff, necessary staffing with the Services, and by the JCS themselves. Further time is consumed by the process of coordination with State. This makes it difficult to achieve optimum timing and flexible action to exploit particular targets of opportunity in the Cold War. Similarly, when State seeks advice from the Defense Department, considerable time may be required to go through the JCS machinery.

Alternatives might be for State to deal more directly with the JCS, or for the OASD(ISA) to deal more directly with the unified commands on politico-military matters. However, each has its drawbacks. Direct relations between State and the JCS would undercut effective civilian control by the Secretary through a qualified staff directly responsible to him, as well as weaken his ability to incorporate consideration of all other appropriate Defense Department considerations into the defense policy viewpoint expressed to State. Direct communication between the ASD(ISA) and the unified commands could weaken the necessary tight operational control over military operations exercised for the Secretary by the JCS.

Continued evolution in practice will be necessary to clarify the politico-military areas in which the JCS and the OASD(ISA) each bear particular responsibility for developing policy for the Secretary. So far as the Military Assistance Program and National Security Council matters are concerned, the ASD(ISA) exercises primary responsibility. In other politico-military areas involving participation in collective security alliances, and to some extent in the determination of appropriate allied forces to be supported through the Military Assistance Program, the thin line between JCS-directed military operations and politico-military policy within the interest of ISA gives rise to unclear responsibility and, at present, some degree of competition between the JCS and ISA for jurisdiction.

This description of some of the problems in organizational relations between one particular Assistant Secretary and the JCS indicates general problem areas in the overall relations between the JCS and the Office of the Secretary under the reorganization. The Assistant Secretaries' basic functions are proposing policies and reviewing programs for conformity to established policy. While the Reorganization Act further clarified the fact that the Military Departments function under the undisputed direction, authority and control of the Secretary, it also added new legislative restrictions on the authority of the Assistant Secretaries of Defense. The Act stipulates that no Assistant Secretary shall have authority to issue orders to a military department unless (1) the Secretary has specifically delegated in writing to

him such authority with respect to a specific subject area, and (2) such orders are issued through the Secretaries of the military departments, or their designated representatives.

The Assistant Secretaries also require specific delegation of authority to make requests to the Chairman of the Joint Chiefs of Staff for action or advice on matters in the Assistant Secretary's assigned field of responsibility. Under these procedures, personal central control over defense policy is assured to the Secretary. However, whenever desired, questions can readily be raised by the military departments or the JCS against instructions on policy implementation by Assistant Secretaries merely by questioning whether the original approval of a policy by the Secretary included the proposed instructions, or by requesting clarification or establishment of new policy.

The preceding review of the extent to which the Defense Department reorganization to date has attained the objectives and put into effect the specific proposals enunciated by the President in 1958 has been presented as a background to the next sections which will evaluate the effectiveness of operations under the existing structure. By looking at three critical problem areas, an attempt will be made to assess the degree of improvement already achieved from the reorganization measures and to indicate areas requiring further improvement through organizational steps. The selected problem areas are: (1) Department of Defense Participation in Formulating National Security Policy; (2) Allocation of Resources; and (3) Lead-Time in Weapons Development.

III CRITICAL ISSUES

A. DEPARTMENT OF DEFENSE PARTICIPATION IN THE FORMULATION OF NATIONAL SECURITY POLICY

Defense policy is more than the sum of the views of component agencies of the Department of Defense. It represents the judgment of the Secretary himself, taking into account the views of the several staffs and agencies advising him. The policy decision of the Secretary of course may not coincide with any one of them since his responsibilities transcend those of any single component of the Department.

The Secretary participates personally and directly in the formulation of national policies. As head of the Department he is responsible for translating national policy into Defense policies. To perform these tasks in accord with his responsibility for maintaining an overall view of Defense policy, the Secretary requires staff support capable of developing integrated policy proposals for his consideration.

Our concern here will concentrate on DOD participation in the National Security Council, (NSC) the Operations Coordinating Board (OCB) and inter-agency relations with the State Department.

The staffs primarily responsible for providing support to the Secretary on national security policy are the Joint Chiefs of Staff and the Assistant Secretary of Defense for International Security Affairs (ISA). The JCS are concerned primarily with the military strategic planning and operational aspects of national security policy. However, the military factors are only one element of the problems involved. Foreign policy, budgetary, R&D and procurement factors are also of central importance to many decisions by the Secretary in the field of national security policy. The Assistant Secretary (ISA) has been designated by the Secretary as his principal staff assistant for developing the overall integrated Defense policy views required by the Secretary in the field of international security. In this capacity the ASD (ISA) provides staff support for the Secretary on NSC and OCB matters, conducts the major part of coordination with the State Department on foreign politico-military and foreign economic affairs, and administers the Military Assistance Program.

Defense Department reorganization has not changed the previously existing procedures for Defense participation in the NSC and OCB. The Secretary is a statutory member of the NSC, and the ASD (ISA) is his representative on the NSC Planning Board. The JCS remain by statute "the principal military advisers to the President, the National Security Council and the Secretary of Defense". There is also a JCS adviser to the Planning Board. The Deputy Secretary represents Defense on the OCB, and the ASD (ISA) serves as his alternate. The JCS have no representation on the OCB, but they have an "observer" on the OCB Board Assistants, an interagency staff group which prepares documents for the OCB.

Although reorganization has not changed this pattern procedurally, changes in authority and policy influence within the Department are reflected in the pattern of Defense cooperation with other agencies. The increased capabilities and authority of the JCS for assuring unity in strategic planning and the added responsibility for operations have fostered a tendency for the JCS representatives to speak for the military Services as a whole in the development of Defense policy for presentation in the NSC or OCB. This tendency may stem from the JCS staff on one occasion, or from the Services themselves on another. It also depends to some extent upon the personality and concepts of the individual staff officer. To some extent the Services may vary the degree to which they look for support either to the ASD (ISA) or to the JCS, depending upon the issues involved and the avenue which they feel will give their position the better hearing. On balance, however, the trend toward the JCS serving as the central military spokesman is unmistakable. Occasionally this trend results in a lack of clear delineation in JCS positions between military advice and attempts to define overall Defense policy interests.

The new JCS responsibility for unified control over operations and the expanded influence of the JCS organization within the Department have also fostered tendencies in the State Department to seek direct coordination with the JCS rather than through the Office of the Secretary. The JCS is regarded as providing an alternate central point of contact, rather than through the ASD (ISA) or other appropriate OSD staff. State officials are inclined to seek the direct military advice undiluted by consideration of other aspects of Defense policy of concern to the Secretary. Direct access to the JCS is also viewed as more expeditious in time of emergency. Yet such direct State-JCS coordination can greatly complicate the Secretary's ability to maintain civilian control and an overall Defense policy viewpoint.

Another factor influencing the effectiveness of Defense participation in the formulation of national security policy, which was not affected by reorganization, is the personality of the Secretary and his Deputy. Men of different background fill these positions from time to time, and they often possess widely differing degrees of interest and expertise in the broad field of national security. One may have a major interest in the efficient business management of the Department, another may have a strong technological or foreign affairs bent. These differing personalities obviously exercise a major influence on the effectiveness with which these men can or will present overall Defense policy interests in the NSC, OCB or day-to-day foreign policy dealings with the State Department. Effective presentation of overall Defense interests requires considerable time to develop the intimate understanding of important facts and subtle nuances necessary to full participation in the councils developing national policy. Without faithful conduct of this "homework" the Secretary cannot effectively present his position and may have less influence than representatives of other agencies who may be better prepared. The loss can significantly affect the nature of national policy. If the crucial Defense considerations are not adequately presented national policy may become dangerously out of balance in terms of the nature of the threat with which the nation is actually confronted.

The continuation of deep splits among the military Services on strategic doctrine limits the effectiveness of the Secretary in contributing to national security policy development. Despite the reorganization efforts to strengthen the Joint Staff and the role of the Chairman of the JCS in directing this Staff, as well as other measures previously noted to reduce Service rivalry, basic doctrinal splits prevent the development of fully agreed strategic concepts for use by the Secretary in the development of national policy. The Secretary consequently must develop his views on the basis of contradictory "splits" in JCS positions or on the basis of compromise statements which intrinsically fail to provide the necessary clear guidance and advice. Such circumstances circumscribe the ability of the Secretary to present a strong, coherent position in the national policy councils. Moreover, the split views become known to other agencies, who tend to pick and choose the one they find most compatible with their own position. National policy may suffer as a result.

It is interesting to note the increasing Congressional interest in this problem. The appropriations and preparedness committees have recently displayed efforts to influence basic internal Defense Department decisions on weapons and force structure on the basis of Congressional views on strategic concepts, because of the evident absence of decisions and agreements on concepts within the Pentagon. Continuation of such tendencies could lead to serious problems in executive-legislative relations which could undermine the ability of the Executive Branch to develop and conduct sustained, coherent security programs. The Congress lacks the information, expertise and continuity to make the decisions within the confines of the Executive Branch. Furthermore any real usurpation of Executive responsibilities would blur the separation of powers which yields effective administration under clearly assigned responsibility and within appropriate legislative authorization.

B. ALLOCATION OF RESOURCES

The formulation of national objectives, as expressed in the basic national security policy, goes on more or less independently from the concurrent budgetary process. If the objectives which are set forth in their national security policy are essential objectives, then, concurrently, consideration shall be given to the ways and means of obtaining them. The failure to do this step-by-step makes compromise and reconciliation between the requirements and resources difficult to achieve.

The budget, in the last analysis, is one of the most influential determinants of national strategy. It circumscribes the actual programs that will be undertaken to implement the strategy. Military advice based on unified strategic concepts is essential to budget decisions involving priorities of expenditure. Alternative weapons systems, force compositions and force deployments - all with alternative costs - can only be resolved realistically against a background of agreed military strategic advice. In the absence of such advice the voice of the DOD Comptroller becomes dominant. While the Comptroller must play an influential role in presenting alternative costs and budget recommendations, the Secretary should be provided the necessary information from his military advisers which will enable him to equate the requirements against the means without having to rely primarily on the Comptroller's viewpoint. The Secretary receives plenty of agreed advice on the magnitude and nature of the Soviet threat, but lacks the necessary military advice on how to deal with the threat to enable him to present an effective position in the national policy councils dealing with budget questions.

The absence of the necessary agreed military advice has also required the Secretary to rely more heavily on budgetary ceilings than on conceptual guidelines to the military departments to govern the development of their annual budgets. In the absence of agreed strategic concepts the budget submissions become based on Service interpretations of the concept. While budget ceilings may be met, the Secretary has little means for evaluating how effectively these budgets reflect the overall military requirements to meet the Soviet threat. The Secretary's problem, however, is not solely the result of internal Defense relationships. It stems also from weaknesses in policy planning on the national level.

Despite the fact that the budget becomes the ultimate determinant of government programs to implement its national strategy, the link between preparation of the Federal budget and the development of national security policy in the NSC is minimal. Each proceeds on a separate cycle with minimum coordination in the developmental process. The Federal budget is developed on the basis of ceilings within which the departments are expected to meet their requirements. National Security policies of the NSC provide basic statements of political, economic and military programs, but lack indications of priorities of effort which could guide the allocation of resources provided to the departments through the budget process. As a result each agency has wide discretion in determining the priorities of effort to implement national security policies. The implementation of agency programs may or may not carry out an integrated overall national security strategy in accordance with NSC guidance. The absence of adequate coordination between the statement of national security requirements and the development of budgets to provide means for meeting them thus inhibits the necessary balancing of needs and means which is essential to maintaining an adequate security posture against the external threat.

These shortcomings on the national level complicate the difficulties within the Defense Department. The Secretary receives a budget ceiling within which he must meet his requirements. In turn, he must transmit ceilings to the military departments if he is to stay within his limitations. The fact that the ceiling assigned to Defense is not closely related to NSC development of national policy guidance means that the military departments cannot obtain meaningful guidance from NSC policies for developing their budgets. Likewise, the Secretary lacks a meaningful basis for evaluating the extent to which the Service budgets reflect or will further national security policy. The whole procedure becomes a vicious circle when it is remembered that one of the reasons why NSC papers lack adequate guidance on the nature and priority of military programs is the inability of the Defense Department to provide agreed clear military advice to the NSC councils.

We have already mentioned that Budgetary decisions significantly control weapons development and procurement. In this context, few realize that we are being increasingly confronted with a growing administrative lead time

in the allocation of dollar resources. This tends to channel the national strategy along a fixed course for years into the future. Thus the government of 1965 may be the unwilling captive of decisions taken in 1959 or even earlier.

For example, now that a decision has been made to develop the NIKE ZEUS anti-missile missile, it will be six years before a significant number of batteries will be ready to shoot. The practical result is that the President who takes office in 1965 may just have an anti-missile defense during his incumbency. On the other hand, the President who takes office in January, 1961 will certainly not have an anti-missile defense during this tenure. The fact illustrates only too well how impossible it is to "buy" sophisticated weapons from the shelf on short order.

It has been said that a large manufacturing corporation has as its mission the delivery of a known product at known places at known times and in known quantities, whereas the Department of Defense has the mission of delivering an uncertain product to unknown places at unknown times and in unknown quantities.

Supposedly the civilian policymakers influence our military posture through the granting or withholding of resources. Yet one is confronted with the anomalous fact that it often takes many years after a new Administration comes into office before it can actually effect policy because of the lead-time in procurement. It may take three years to deliver developed end-items on an appropriation that was made three years ago and conceived in the budget process four years previously. Therefore, the civilian policymakers in office at a given time are essentially trustees of solutions which have been worked out by people who have preceded them.

We are frequently limited in foreign policy actions open to us by the capabilities of our military forces. Because complex weapons systems are extremely expensive and slow in development, the military establishment is less flexible than in previous times. Ideally, strategy should set the standards within technical capabilities and economic feasibility. In reality, strategy has been progressively subordinated to weapons technology and to budgetary restraints.

The President, in the budget process, initially establishes a cut of the total national economy which he determines will be approximately responsive to the requirements of military forces and which reflects his judgments on other aspects of the Federal Budget. Decisions on any given part of the Federal Budget must consider the impact on the over-all Budget and its relationship to the total national economy and the country's international financial position. The initial administration figure for the Defense budget is generally much lower than that desired by the Services. This is understandable in light of the fact that Defense is but one claimant in the budget process, and it must live with decisions taken at the national level reflecting factors beyond the cognizance of the military services. It becomes the task of the ASD (Comptroller) to inject consideration of budgetary considerations at the national level into Defense budget decisions. This

office relates national economic trends to the magnitude of Defense expenditures and translates national budgetary decisions into specific Defense budget levels. Since nationally determined ceilings on Defense budgets are usually considerably below the sum of internal Defense Department requests, the ASD (Comptroller) is required to conduct an extensive screening process by which proposed programs are pruned to eliminate items of lesser priority.

In the three Services budget estimates are built up from needs generated at the lower levels. The budget estimates of subordinate commands and agencies are carefully scrutinized by each Department. Eventually the Service budget estimate is presented to the Office of the Secretary of Defense and the Bureau of the Budget. The hearings of the initial budget requests are usually jointly conducted by OSD and Bureau of the Budget. These hearings produce budget figures which are used in preparing the "President's Budget", which is then defended by each Department before the Congress.

After the Congress has completed its budget hearings, each military department must again prepare, in great detail, an "apportionment request" which is, in effect, a revised budget estimate and must again defend these estimates before the Office of the Assistant Secretary of Defense (Comptroller). This procedure provides the office of the Defense Comptroller the opportunity to alter significantly or curtail these programs at two critical times in the program budget cycle. In short, the military who must pass many hurdles before they can get any money from Congress must go back to DOD to obtain the actual use of money already authorized by Congress. It is important to note that this "apportionment process" is specifically required by laws while causing bureaucratic delays, it also permits adjustments in programs in light of conditions which may have changed since preparation of the budget some months earlier.

Title IV of Public Law 216, passed in 1949, removed the Joint Chiefs of Staff from the budget process, except for establishing force structures and figures as a basis for beginning the budget cycle. The functions and responsibilities for budget cutting, trimming and adjustments on an over-all departmental basis was thus taken over by the Secretary of Defense.

It has been generally recognized both within and without the Pentagon that the budget process is the Secretary's most influential control technique over the Department's broad activities. It is to be expected, therefore, that the office of the Defense Comptroller contains a number of organizational units oriented toward supervisory functions. This orientation generates requests for a staggering amount of statistical and justification data. In the Pentagon, the Comptrollers probably have at their disposal more control data than anybody else. They have gained in importance by having a lot of the answers that nobody else has.

Despite the range of controls already available, the President's message of 3 April to the Congress stated the general objective of making future appropriations to the Department in a manner which provided the Secretary with "adequate authority and flexibility" in his direction over the use of Defense appropriations. Some observers believe the Secretary now

has all the power he needs to achieve his desired control through the budget process. He issues the guidelines governing the preparation of Service budgets; he reviews these budgets prior to presentation to the Bureau of the Budget and the Congress; and he controls expenditures out of the appropriations provided. The crucial question, however, is by what standard this control is exercised? Does the Defense budget accurately reflect overall national security policy and the essential military elements of that policy? The President's message to the Congress in April 1958 clearly indicated that much more than has been accomplished to date was required to link effectively the Secretary's budgetary powers with his powers of strategic planning and operational direction, when it stated: "This need: /i.e., control over appropriations and expenditures/ is particularly acute in respect to his powers of strategic planning and operational direction."

Since the 1958 reorganization clearly assigned the staff responsibilities for unified strategic planning and operational direction of fighting forces to the Joint Chiefs of Staff, the President's message implied the necessity for organization and procedures which more closely linked the work of the JCS and Defense Department Comptrollers. Since the reorganization a small liaison staff has been established within the JCS organization to keep the JCS informed on budget preparation and execution and the implications for military planning and operations. Parenthetically, it is understood that the JCS will participate much more intensively in the preparation of the FY 1961 Defense budget.

In the budget process each Service can, and does, attempt to make sure that it obtains as large a share as possible of the total Defense budget for its own forces. This perpetuates competition among the Services despite the fact, strongly emphasized in the President's message to the Congress, that modern military experience indicates that unified planning and operations must replace traditional concepts of single Service roles and missions. The budget of military department presented to the Secretary, therefore, emphasizes the strategic concepts of that Service for the operation of its own forces, rather than integrated concepts for conducting the broad military tasks confronting the U.S.

Defense directives attempt to moderate domination of the budget by Service viewpoints by specifying that the plans of unified commands and the advice of commanders assigned to such commands will be taken into account. However, there is considerable question whether the Secretary will in practice be able to assure the necessary unified strategic planning and operations in terms of prevailing global military requirements until he can obtain statements of budget needs on the basis of broad military tasks and can exercise greater directive authority over expenditures.

The "functional budget" has been proposed in some quarters, whereby the budget would be prepared in a manner which would combine individual Service components for continental defense, strategic striking forces, limited war, etc., to permit the Secretary more effectively to equate budget priorities against the actual military tasks confronting the U.S. Unified commanders assigned missions to execute these tasks would be given greater voice in the budget process which creates the forces they use. Little progress, however, has been made toward such a "functional budget". It requires considerable preparatory work to change from the existing system; for example, in ascertaining just what specific types of forces and equipment go into such a broad function as "continental defense". In the spring of 1959 the Congress asked the Pentagon for a master plan for air defense of the U.S. to help it prepare appropriations involving air defense missiles. This required the Department to develop cost estimates to accompany its "master plan", in effect a functional budget. These estimates were prepared on "crash" basis, involving one-time procedures and wide use of ad hoc assumptions, and thus can hardly be looked to as providing the basis for further progress toward the "functional budget".

The Defense Department budgets for FY 1959 and FY 1960 took partial steps toward achieving the President's objectives for strengthening the budget authority of the Secretary. Both appropriation acts included a recommended emergency fund available to the Secretary to exploit unexpected R & D break-throughs. Both included limited authority $150 million in FY 1960) for the Secretary to transfer funds from one appropriation category to another. The FY 1960 act expanded this transfer authority to enable the Secretary to draw from any category to speed necessary missile programs. The budget was presented in a framework of broader categories, generally according to broad functions such as procurement, maintenance, R & D, military operations; etc.

C. LEAD-TIME IN WEAPONS DEVELOPMENT

In the last several years, the term "lead time" has come to express a vital area of concern to those responsible for American security. Because of two factors, the technological sophistication of modern weapons and the rapid technological advance of the Soviet Union, the Department of Defense must have a capacity to analyze the technological future with much greater perceptiveness than has ever been required before. Momentous decisions must be made on which weapons to develop and when to buy them in what quantities. The Department of Defense is also continually confronted with decisions on how to adapt the military structure to the changing requirements of new weapons technology. There seems little question that the Soviet Union has capitalized politically and psychologically from its nuclear stockpile, its ICBMS and its spurt forward in space technology. Consequently, U. S. decisions on weapons are intimately related to Western strategies and diplomatic posture in the protracted conflict with the Communist Bloc.

"There are several fundamental reasons for Soviet advancement. First is a continuous sense of awareness and decision, both by planners and those who carry out plans, as to the direction and relative priority of projects. Second, with these fairly clear objectives in mind, the Soviet decision making structure itself is more responsive and immediate in its reactions. Third, once decisions and priorities are established, efforts are devoted to a particular project in proportion to its priority, almost regardless of cost.

"The result is that Soviet lead-time for complex weapons systems development and other technical projects tends to be shorter than our own. This reduced lead-time stems not from greater intellectual or technical capacity, but from the will to take and make decisions and then to produce results. The Soviets decide to finish a project at a certain point in time. We decide either to finish a project that costs X dollars, or to finish it on a later date because we have only X-Y dollars. The crucial factor, however, is really the target date for making the device operational. The Soviets allocate funds according to strategic priorities, but do not determine priorities or strategies according to available funds." 1./

Our System of weapons development differs in several important respects.

1./ Curriculum, National Strategy Seminar (National War College, Washington, D. C. - July 12 - 25, 1959), prepared by Foreign Policy Research Institute, U of P, P. 33.

Many offices in the Defense Department are directly involved in the process by which weapons are developed, tested and ultimately procured. At the DOD level the Comptroller, the Director of Defense Research and Engineering and the JCS play the leading role. What is the existing situation regarding U. S. lead-time in weapons development?

An officer in the Air Force stated that Air Force development is deadly "set-in-concrete" until 1967-68. The phrase forcibly illustrates that the average time which elapses between the formulation of a weapons concept and the attainment of a significant inventory is eight to ten years. Long before technical decisions are taken upon individual weapons there is an extended process of planning and programming, budgeting and apportioning, obligating and expending which often consumes four or five years. This is not to mention the additional time elapsed before the first using units are trained to use the weapons and are deployed operationally.

Imagine, if you will, that the National Security Council decides this autumn (1959) that emphasis must be placed upon a new but promising weapons system on which several years R & D time and money has been invested. In order to make this weapon system operational the following sequence might well ensue. The first six months of 1960 would be spent introducing this new capability into the military planning cycle. It would first appear in a Joint Plan which provides the basis which the services prepare their detailed force requirements. Starting in the summer of 1960 and extending until the end of 1961, the DOD and the services would be involved in developing the detailed programs and specific costs to be included in the fiscal year 1962 budget. The sequence of submissions and reviews at all levels from the Bureau of the Budget down to the most humble user consumes one and one-half years. By the beginning of January 1962 the budget goes to the Congress. The Congress generally completes its work in six months and appropriates the money required. During the fiscal year beginning in July of 1962 the Bureau of the Budget apportions the first funds on a quarterly basis. In this example, since R & D lead-time has already been accounted for we would anticipate that units using the new weapons would be fully organizaed, trained and equipped by the spring of 1964.

Long lead-time, such as this, has side effects which encumbers effective strategic planning. Because it calls for a view of the future which is uncertain, it lends an air of unreality to strategic planning. Additionally, the exigencies of the moment in the Cold War and dips in the national economy during the long lead-time tend to detract from the appropriate influence of long range strategic plans on molding the direction of weapons technology.

Scientific and technical decisions taken outside the strategic framework also detract from the effectiveness of strategic planning and restrict future freedom of action. One naturally seeks the best engineering and scientific advice available with respect to increasingly complex and expensive weapons system. Unfortunately, for the most part, scientists are not closely associated with strategic planning or the tactical thinking which form the basis of military requirements. Decisions which are based chiefly on technical design and performance characteristics often ignore more important aspects of the problem such as vulnerability, mobility, or even political utility. Yet technically-weighted decisions taken outside of strategic planning channels often determine capabilities which cannot be changed easily because of cost and long lead-time factors.

Those concerned with the military problems of today are painfully aware of the rigidity of the defense structure and of their dependence upon the foresight of their predecessors. Technical and budgetary decisions made today will fit the USA of 1965 into a weapons straight jacket much more binding than any strategic plan generated from within the Joint Staff.

If the U. S. hopes to meet the challenge of the Soviets and hopes to make the best use of its natural talents in the scientific and engineering field it must master the many problems attendant of lead-time so as to tie more closely its weapons decisions to an optimum strategy. Three basic steps seem essential:

1. National military strategy must be aligned with the changing threat and with changing U. S. weapons capabilities.

2. The JCS must provide clear and concise military guidance to the scientists and engineers as a basis for their action.

3. All elements of the government--the Congress, the civilian policy makers, the scientists and the military--must recognize and act upon the knowledge that the security of the nation in the next decade hinges largely upon actions taken now.

The problem of prolonged lead-time which adds vexing complexities to national security planning appears to be theoretically manageable! The phases of weapons development from the allocation of funds to the initiation of procurement must overlap and move forward on a progressive time belt. As General Medaris has expressed it:

> "Production must begin before development is complete so that hardware requiring the longest lead time will be available for timely assembly of the tactical prototype and delivery to the troops who will fire it. In turn, the troops must be prepared to fire the tactical missile before they receive it. Only by increasing supporting research, by funding the development of long lead-time components before their need is expressed in a user's specific requirements, can we reduce the lead time to a minimum."

It would be unfair to blame the Department of Defense for all of the delays that have been ascribed to the weapons development program. Lt. General Trudeau, Chief of Army Research and Development, has quite properly recognized that the fully depth of the problem reaches from the top of the Defense Department down to the last sub-contractor.

According to Trudeau, "Money can buy many things, but it can never recover time lost through faulty administrative procedures, deferred decisions, lack of vision, timidity, complacency, misdirected or fruitless effort, or through past inadequate funding." ... "I am convinced that there is more that can be done to resolve this lead-time problem among those of us in responsible positions, and all our subordinates, than in perhaps any other single step that could be taken."

Lead time can be cut by providing machinery which will give a man the responsibility and funds to do his job, keeping him under only enough management control to make sure he does not go too far afield. General Trudeau believes that we suffer from over control. "We have failed to decentralize authority. We are over-reporting. Too much lost time is due to restrictions placed by top echelons on succeedingly lower echelons to protect themselves."

The lead time issue is so important that it must be attacked vigorously on all fronts. It must be whittled away by: a. "decentralizing authority; b. More boldness; c. Faster decision making; d. Funding to fit the program, not programming to fit the budget; e. above all else, an individual sense of urgency and a team eagerness to cooperate." 1./

1./ See "TIME - The Rescource, We Mismanage Most," Bill Borkland, May, 1959. Armed Forces Management.

This survey has outlined major problems of organization which still confront the Department of Defense. However, much has been accomplished since the Presidential proposals and the Reorganization Act of 1958. Major strides have been made in making the internal administrative adjustments responsive to these authorizing measures. Continuing problem areas are generally recognized, and efforts are being made to solve them. Generally, the 1958 reorganization constitutes a further step toward greater centralization of authority over policy control and greater decentralization of operations. This trend has intensified the urgency of developing further the organizational techniques which assure effective decision-making at the highest policy levels of the Department. Yet, organizational measures can be no more effective than the personnel which staff the structure and make it "tick".

IV THE PERPETUAL QUEST

A fundamental factor governing the success or failure of any reasonably organized effort is the quality of its leadership. Here we face a difficult hurdle: the difficulty of attracting outstanding men into key executive positions in the Department of Defense. What is the distinctive characteristic of our society which accounts for the fact that so few of our top people want to take on the onerous and complicated duties that are associated with power and political preeminence?

In this country, many people have a primary concern with the family, a secondary concern with the community, and are not at all concerned about national or international affairs. The individual is preoccupied by his relations with other individuals. This preoccupation can exist only in a society which protects the individual and guarantees him basic freedoms and opportunities.

Yet, in the face of it, how can we bring to the key places of government those who are best qualified to deal with national security problems, both at the Department of Defense level and higher? It is at this focal point that the military, civilian and political problems have to be brought together, synthesized and solved.

Oddly enough, many of the so-called key positions do not always carry power with them. In the complex hierarchy of the Pentagon meaningful decisions can be made by only one or two people, i.e., the Secretary himself, his Deputy and occasionally the Comptroller or the Assistant Secretary for International Security Affairs. Within our government as a whole, and particularly in times of crisis, decisions are made by the President and one or two of his close advisers. Even then it must be recognized that there

is a constitutional and in a sense, a political division of power between the Executive Branch and the Legislative Branch so that there are not, in our government, such centers of power as we might expect to find in more closely-knit structures. For these as well as historical reasons public positions in the United States do not carry with them the prestige that are associated with them in other governments. Instead, prominence in the United States, particularly of late years, has typically been the reward of the rise to a commanding position in business through a business career. An individual can achieve eminence with much less risk than through government experience. Whom then do we recruit for government? The few who are willing. Yet, even they often require at least a year before they can render effective assistance to national security, and they often remain in government only two to three years.

Another facet of our leadership problem is the different manner in which civilian and military leaders address themselves to problems. There is some incompatibility in the defense area between the higher military officials who are accustomed to reaching and/or getting decisions, and the political superiors in the Department who (more and more, as business comes to be a game of accommodation between conflicting interests) tend to take on some of the characteristics of politicians. It is perhaps fair to say that the trend toward "civilianization" in the Pentagon, rightly or wrongly, has led to an emphasis on the settlement of disputes and differences by mutual agreement and on the reaching of compromises rather than on the making of decisions. It seems as if this process has been extended even to military fields. Often the military now finds itself organizationally placed in a position where it must operate in the civilian manner. In some cases, the military are unwilling to put up hard issues for decision or prefer to reserve their solution to themselves. Whatever the cause, the interjection of this process makes it difficult for any other system of decision-making to survive.

This dichotomy may lie at the root of many of our troubles. The search for a cure challenges the imagination of our most capable leaders. It is a problem deserving extensive study and forthright action on an urgent basis. Above all, it is a problem that can be solved only by dedicated men. For these, by their example, help to nurture and develop dedication in others, for only thus can institutions be made to function effectively and enduringly. True leadership will be able to arouse that which will persuade our society to support, without abandonment of its basic values, the increased efforts that our national security requires.

Nietzsche's Critique of Reason and its Political Consequences

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Political theory, whatever else it may be, is an attempt to understand political fundamentals. "Irrationalism," as we use that term today, signifies doctrines according to which man is ruled by something other than reason, or possesses much less reason than was previously supposed. Irrationalist doctrines are of two types: the scientific or philosophic on the one hand (e.g. Freudian psychology, Mannheim's sociology of knowledge, existentialism), the ideological or political (e.g. the pronouncements of Hitler and Mussolini) on the other.

What is political theory to do with irrationalism? Usually it is called upon to integrate the irrationalist findings of the other sciences into its own framework of understanding: political theory must make use of the insights of Freud, etc. But the term "irrationalism" is unclear. The problem it opens concerns the place of reason in the human constitution, in human affairs generally, in current affairs in particular. Strictly speaking, irrationalism should maintain the irrationality of man: man acts against reason. But this implies knowledge of what it is to act according to reason. And it of course assumes that we know what reason is.

Let us assume that the locus of reason is the human mind, and that reason is mental comprehension or understanding. To convey what is meant by understanding we use the physical images of seeing or grasping. Understanding is a mental seeing or grasping which can occur directly or indirectly -- directly when one is confronted with the self-evident, indirectly when one reasons from the self-evident to the non-self-evident. To understand in the fullest sense is to understand completely and finally, i.e. perfectly, or absolutely. The object of understanding is the world, including those things necessary to the guidance of human conduct. To live rationally is to live by reason in all possible respects, and to live irrationally is to live on the basis of ignorance, false belief, feeling or faith.

Were all our efforts at understanding to fail, we would conclude that human reason is a fictitious power -- it only goes through the motions of understanding. Consider, however, all the knowledge already implicit in such a conclusion. Thus it is self-contradictory to affirm the mind's complete inability to understand. The question then becomes, what can it and what can't it understand? To use the term "irrational" meaningfully we must be prepared to show that reason is gone against, or that understanding of a certain matter exists but has not been followed. There must be some content to the "rational" for there to be some content to the "irrational."

Today we apply the term "irrationalism" to such doctrines as have been mentioned. But this usage tends to abscure the vital fact that modern

philosophy and science have worked in the direction of minimizing the rational in the sense indicated above, and at their moments of greatest triumph. That is, they have set increasingly great limits to the powers of human understanding, until the height of the rational seems to require the solemn abjuration of the desire to understand in the old sense. Take logical positivism by way of illustration. It is the philosophic doctrine that positive science alone yields knowledge of the world. But this knowledge, we are told, is never certain or final, i.e. always in error. And of what world is it knowledge? Not of the world as it is in itself, but of the world of our sensations: science is nothing but the economical ordering of our sensations for the purpose of prediction and human control or use. As for values, of their propriety or impropriety there is no knowledge whatsoever.[1] According to logical positivism, then, we are incapable of understanding reality and of guiding human choice by understanding. Is it therefore to be included with Freudianism and the sociology of knowledge as an irrationalist doctrine -- one that reveals certain unsuspected limitations of the human mind -- and are all now to become the very standard of rationality, the departures from which are denominated "irrational?"

The most recent phase of modern intellectual development has resulted in the dominance of the view that there are no absolutes, that absolute beings and values on the one hand, and absolute knowledge on the other, do not exist. Charles Frankel is one of those holding this view, and his The Case for Modern Man is an attempt to show that philosophical relativism can serve as the rational basis of liberalism. He believes that such a basis is needed if liberalism is to be restored in the minds and hearts of liberals, and he tries to demonstrate how the double abysses of scepticism and absolutism can be skirted.

Frankel knows he must secure two principle points: first, that philosophical relativism, and only philosophical relativism, yields valid knowledge of values; second, that philosophical relativism is a true and healthy, not a true but poisonous, principle: men must be able to live, and live well, on its basis, and without the belief in absolutes. And this second point raises an additional problem arising out of the variety of ultimate beliefs and values encouraged by liberalism: can societies live well without general agreement by its members on ultimate ends, whether absolute or relative?

Here is the nub of his case. On the first point he argues that we have moral knowledge, but it is relative to available observations, and there is always the possibility that new observations might occur requiring a change in our values. But this possibility is merely an abstract logical possibility, and such values as good faith, charity, honesty and self-respect have good relative grounds. "Such values are not absolutes: we have no advance guarantee that they will always be the final principles on which we lean. But until trouble does turn up, we leave well enough alone."[2]

Frankel fails to indicate on what grounds these values are even relatively valid, and under what conditions they might have to be surrendered. But this is not all. A few pages later we are told that "an element of choice, of simple human preference, is uneliminable from moral judgments."[3] In fact, they seem to form the very core of such judgments, and the scope of valid moral choice is limited only by what is possible, or the price put on such choice by the real conditions of

the world. Desire, choice, preference, interest, then, rule in moral matters. They are in the driver's seat, and intelligence is only their instrument. But even enlightened desire -- that very pale shadow of its Hobbesian ancestor -- would hardly serve Frankel's purpose: it would lead as well to the opposites of liberalism as to liberalism itself. To liberate the manifold desires of manifold individuals without subjecting them to an overarching good or duty, is to strip liberalism of its rightfulness and dignity. It is like wanting the United States without wanting something similar to the Declaration of Independence imbuing the minds and hearts of its people.

This brings us to the second point. Frankel admits that men need to believe in values of lasting duration, but he denies that these values must be certain and final. And he admits that men need common habits, traditions, symbols, codes for a healthy social life, but he denies that they need a common set of ideas or beliefs, or a common set of ultimate values.

> Social integration in a liberal society does not come from integrating ultimate values. It comes from organizing secular institutions in such a way that men's "ultimate" values -- their consciences, their sense of the meaning of life, their personal dignity -- do not become elements of public conflict.[4]

Now I think we have the whole picture, in its essentials. Liberal society does not need consensus on ultimate beliefs and values. Desire is the ruling element in man, and it can be kept within bounds by a combination of habits, etc. and a certain kind of political mechanism. It is this last, in fact -- political mechanism -- that lies at the core of the liberal solution. But we are forced to wonder whether habits, traditions, symbols, codes are indeed separable from ultimate values and beliefs: can we have the first in common without having the second in common? We wonder also why Frankel felt impelled to deliver a rational public defense of liberalism in the first place if liberal society did not need ultimately to believe in itself, to value itself above all else -- points which he grants at the outset of his work. Finally, we question his claim that it is enough for men to believe in lasting but not final values, that is, to dedicate themselves fully to ends which they consciously know may at some undetermined future date reveal their utterly delusive character.

More than a century ago another liberal addressed an audience in Springfield, Illinois on a subject somewhat similar to Frankel's: the perpetuation of our political institutions. Hear his conclusion:

> Passion has helped us, but can do so no more. It will in future be our enemy. Reason -- cold, calculating, unimpassioned reason -- must furnish all the materials for our future support and defence. Let those materials be moulded into general intelligence, sound morality, and in particular, a reverence for the Constitution and laws; and that we improved to the last, that we remained free to the last, that we revered his name to the last, that during his long sleep we permitted no hostile foot to pass over or desecrate his resting place, shall be that which to learn the last trump shall awaken our Washington.
>
> Upon these let the proud fabric of freedom rest, as the rock

> of its basis; and as truly as has been said of the only greater institution, "the gates of hell shall not prevail against it."[5]

Freedom is founded on common ultimate beliefs and values, in Lincoln's view. He goes so far as to call for a political religion instilling reverence for the Constitution and laws. And by his final paragraph he makes perfectly clear his conviction that freedom must be regarded as an imperishable good, and the free society as one that need never perish.

Frankel typifies three weaknesses of contemporary relativism. It is unable to provide a rational defense of free society. It fails to realize that the spread of belief in its own philosophy weakens rather than strengthens free society. In addition, it cannot explain how its own philosophy manages to avoid being relative. In turning to Nietzsche we must bear these in mind, for he was the battler against absolutes par excellence, as well as the "irrationalist" philosopher par excellence, and although liberalism constituted one of his objects of scorn rather than dedication, he tried to face the difficulties that his relativism posed for itself as well as for the new age of human greatness he strove to create.

Let us first examine one of Nietzsche's earliest works, The Use and Abuse of History, published in 1873. More accurately entitled "Of the Advantage and Disadvantage of History for Life," it is Nietzsche's parallel to that earlier attack on the Enlightenment, Rousseau's Discourse on the Arts and Sciences, just as the later Genealogy of Morals is his parallel to Rousseau's Discourse on the Origin of Inequality. We begin with a passage found near the end of the work:

> But if we have the doctrines of the finality of "becoming," of the flux of all ideas, types and species, of the lack of all radical difference between man and beast (a true but fatal idea, as I think) -- if we have these thrust on the people in the usual, mad way for another generation, no one need be surprised if that people drown on its little miserable shoals of egoism, and petrify in its self-seeking.[6]

Notice that the doctrines in question do not solely pertain to the flux of human ideas but of all "kinds", including man, whose origin is implied while his destiny is left unspoken. All is in flux, including all human ideas and, of course, values, which means they are never simply true, or absolutely true. This can be shown from an earlier passage:

> A historical phenomenon, completely understood and reduced to an item of knowledge, is, in relation to the man who knows it, dead; for he has found out its madness, its injustice, its blind passion, and especially the earthly and darkened horizon that was the source of its power for history. This power has now become, for him who has recognized it, powerless...[7]

Linking the two passages, we see that the term "historical phenomenon" must include human ideas of every kind, the most noteworthy of which are philosophic ideas. All human things take place within an "earthly and darkened horizon," all are historically relative. Now historical relativism is not identical with Frankel's philosophical relativism: in fact, Frankel explicitly rejects it in the form found in Karl Mannheim. But if all moral preference is founded on desire, and if the orientation

of all philosophic and scientific research is also founded on the desires, interests, or values of the investigator, and if desires themselves change historically, change with the general conditions and problems facing us, then it is impossible to escape the conclusion that all knowledge, moral and non-moral, is historically relative.[8] Historical relativism, in other words, becomes the basic form of relativism.

Let us for the moment postpone the question of why Nietzsche accepted the formula of total flux and examine the consequences he drew from it. The first is that this idea kills, it is fatal, poisonous. From this it follows that restraint must characterize the morally responsible philosopher, historian, scientist. Life needs some illusion, needs a darkened horizon rather than wholesale Enlightenment, needs a limited enlightenment only as its instrument. A sketch of his argument follows, and bear in mind that he directs his criticism mainly against the historical school dominating German thought and education at that time.

It is a universal law that a living thing can only be healthy, strong and productive within a certain horizon. Life means instinct, passion, desire, action; it requires using things from its environment for its own growth or to repair its hurts: it must have a "plastic power." Now man becomes man, i.e. something different from other animals, by developing his memory and using the past for the sake of the present. Historical knowledge is knowledge of the past. But when historical knowledge ceases to serve life, action, and the plastic power, when it turns against life, it becomes dangerous. Once the human mind becomes capable of conceiving of the eternal, man needs to believe in a stable and eternal foundation for his being. This alone can give him security, this alone can give him a perfection to love and follow unconditionally. He therefore needs an horizon of pious illusions, myths, and these are furnished to him by art and religion. But they are threatened by science, and in particular by historical science.[9]

Culture is that which enable men to live well in society. Culture is a second nature, an artistic style giving the external actions and the inner life of a people an overall harmony or unity. The great culture is that which encourages human greatness in thought, deed, and art. History must serve culture and life, and it can do so in three ways: monumental history studies past greatness to inspire greatness in the present; antiquarian history -- the original home of the "real historical sense" --[10] provides a conservative mood by restoring and revering the past of one's own people; critical history unearths the unsightly historical roots of present injustices that deserve to be overthrown.

From the viewpoint of life, action, culture, there are several ways in which history can be misused. These largely arise from the fact that the study of history had become an infinite theoretical enterprise, going far beyond limited, local and pragmatic functions. The total past had become an object of study for its own sake. Attention was removed from action in the present. Value-free objectivity replaced the "ira et studium" -- anger and zealous affection -- necessary to action. At the same time the mind became flooded with an unending variety of beliefs and values that undermined cultural unity and the narrowness essential to dedicated action. All beliefs and values were shown to have a limit and perishability unknown before, revered institutions were criticized to their roots, past greatness was lowered to the mediocrity of under-

standing of the average historian. The role of hidden material forces and of mean egoism as historical determinants was stressed. And mixed with these was another powerful trend: viewing history as a universal evolutionary progress working by necessity and culminating in the high conscious civilization of the historians' own day. This trend, stemming from a combination of Hegelian philosophy of history and evolutionary natural science, exalted a present that was highly defective in the essentials of culture and greatness, however mighty, wealthy, and knowing it might seem. Reverence for the world process meant complacency, cravenness before powerful realities, the end of real creativity. It eliminated the need for further action in the real sense.[11]

The ultimate effect of the continued application of the historical sense -- of the large-scale writing and reading of improper history -- must be the destruction of all the pious illusions, all the absolute ideals and beliefs required for human greatness, culture, and life itself. And with perishing of all stable foundations will come mean, egoistic nihilism. But if one must choose between life and unrestrained thought, the choice must be for life, simply because all high thought requires some decent form of social life as its minimal condition. There is only one way out: not political censorship, but the winning over of the future leaders of German thought and education to a new conception of responsibility and greatness.[12]

If one looks at the overall message of The Use and Abuse of History, one finds in it two fundamentally discordant elements. One is its historical relativism, the other its appeal to the needs of life, of culture and of human greatness. The prototypes of human greatness are the ancient Greeks, especially the Athenians, and more particularly -- as one gathers from The Birth of Tragedy -- pre-Socratic Athens.[13] But these prototypes are not simply to be returned to. Having passed through the experience of Socratic science (or "Alexandrian culture") and Christianity, German youth is called upon to achieve something akin to, but higher than, its ancient Greek prototypes. "History must solve the problem of history, science must turn its sting against itself."[14] But this can only mean that historical relativism will have to be transcended if new forms of greatness are to be possible. For greatness is inspired by great love, it is motivated by some absolute conception of perfection. But all such conceptions are "pious illusions." Whence, then, the motivation for new greatness?

At first Nietzsche was tempted to find in German music, in Wagner, the new source of myth by which German youth might be invigorated.[15] But for the careful reader of Nietzsche, and for Nietzsche himself, this could not suffice. Myth that is known to be myth cannot move men. There is only one real possibility: to show philosophically that historical relativism can itself be transcended. To begin with a question can be raised as to the historical accuracy bred by the relativistic interest in history. Does the historical relativist properly understand history? Nietzsche claims that he does not. The most important elements of the past elude him, and those are its humanly great elements. To understand past greatness, one's major interest cannot be solely theoretical, and one cannot be a mediocre character. Only those who presently have greatness within them, who have an interest in greatness, who are themselves engaging in great tasks can understand past greatness: "like by like."[16] But this qualification is met by very few historians indeed. In general, the historical school has failed at the most important point to understand

the past: it has brought the past down to its own level of mediocrity.

However true, this point does not suffice to meet the crucial difficulty arising out of historical relativism. That relativism maintains the historical limitation of all understanding and hence of all action. But those men of great capacity who know and accept its verdict must lose the highest motivation for their greatness, and they will be unable to be like or akin to the great of the past because they will not accept their pious illusions. They will lack the motive for understanding the past great because they know in advance that past greatness depended crucially on false beliefs. The situation would be similar to what we find in the histories of philosophy or political theory written in our own day: the motive necessary for carefully considering, that is, for understanding the "absolutist" thought of the past as it wanted to be understood -- a motive which might be called the open-minded desire for truth -- is completely lacking.

This forces us back to the relativistic thesis itself. What was the evidence for this thesis in the first place? Nietzsche quotes the historian Niebuhr on the subject of the utility of historical studies:

> History is useful for one purpose, if studied in detail: that men may know, as the greatest and best spirits of our generation do not know, the accidental nature of the forms in which they see and insist on others seeing -- insist, I say, because their consciousness of them is exceptionally intense. Anyone who has not grasped this idea in its different applications will fall under the spell of a more powerful spirit who reads a deeper emotion into the given form.[17]

Without the study of history the greatest and best spirits of Niebuhr's own generation could only see through accidental forms, and they did not know it. It is from this statement that Nietzsche drew the conclusion about the "earthly and darkened horizon" within every historical phenomenon which we quoted earlier. But the logic of the argument is not clear. First, Niebuhr did not say that <u>all</u> generations of men have seen through accidental forms. And he left his conclusion unspecified: for it could either be that history would help us become conscious of seeing through accidental forms and thus enable us to discover non-accidental forms, or that history would only make us conscious of the fact that we must <u>always</u> see through accidental forms. From the first alternative, the true philosophy or mode of seeing might be obtainable by men, from the second we have an insight only into our inevitably faulty seeing and not into how to see correctly, i.e. we have historical relativism.

The first alternative reminds us of classical political philosophy, which admitted that it could begin only after knowledge of societies other than one's own had become available. But this is not to call, as Niebuhr does, for a detailed knowledge of history, and it did not occur to classical philosophers to attempt to correlate the modes of understanding of their predecessors with the times in which they lived. Yet it is precisely this sharing of a darkened horizon with the surrounding times that Nietzsche, working from Niebuhr's statement, attributes to <u>all</u> ideas. Now the philosopher who gave this theme its highest reputation and widest currency was Hegel, and it was precisely the Hegelian philosophy of history that managed to avoid the two

alternatives mentioned above. According to Hegel, the variety of the forms of seeing or understanding can only occur in a certain sequence, and they are not simply accidental: they constitute stages in the self-understanding of the human spirit, limited stages of real understanding, and they culminate in the final stage of unlimited or absolute understanding, that of Hegel's own philosophy. Thus, the ways of seeing do see something, they are not based on sheer fictions; but they only see what the particular level of human experience permits them to see.

Now we have three alternatives, and it would seem that Nietzsche's use of Niebuhr entails historical relativism pure and simple. Certainly Hegelianism and its diverse effects constitutes one of the major targets for Nietzsche's criticism in this work. Nietzsche denies that history is rational, that it is progressive, that it is complete. But he keeps the residue: the principle of historical limitation. There remains, however, a crucial question. Are the ways of seeing of different periods in some manner ways of seeing, of understanding, or are they based on mere arbitrary fictions? All his life Nietzsche claimed to be closer to Heracleitus than to any other philosopher.[18] Heracleitus was the original teacher of the finality of "becoming." But he did not teach the becoming of all ideas, and he was not a student of history. Nietzsche, on the other hand, never ceased being a student of history and laid claim to unrivalled discoveries in the field of historical understanding. When one reads either the first of his histories, The Birth of Tragedy, or the last, The Genealogy of Morals, one is impressed by the fact that he is not merely studying the sequence of human errors or vain delusions: to study history is to learn something vital about the growth, not merely the change, of the human soul. This implies that the principle of historical limitation or relativism retains an additional Hegelian ingredient for him, and is therefore unlike the radical relativism of the purely accidental or fictitious that he derives from Niebuhr and that is prevalent in our own day. Here is the problem on which we must keep our eye as we proceed to the later Nietzsche. We want to understand the precise character and grounds of his historical relativism, and how he can restore the absolute but now lightened horizons which alone can foster great endeavor in the new age.

Before leaving this work we should take note of certain characteristics of Nietzsche's view of life and culture. First, the element of life and action is not human reason but instinct, passion, desire, and it is to these that Nietzsche constantly refers and appeals. He speaks, for example, of life, "the dim, driving force that inevitably desires - itself."[19] Life is essentially action, not reason; reason is somehow derivative, it is not even attributed to original man, between whom and the animals there is no radical difference. Reason develops, to be sure, but it is never allowed a controlling authority except in a few rare philosophers:

> This is how history can serve life. Every man and nation needs a certain knowledge of the past, whether it be through monumental, antiquarian, or critical history, according to his objects, powers and necessities. The need is not that of the mere thinkers who can look on life, or the few who desire knowledge and can only be satisfied with knowledge; but it has always a reference to the end of life, and is under its absolute rule and direction. This is the natural relation of an age, a culture and a people to history; hunger is its source, necessity its norm, the inner plastic power assigns its limits.[20]

Note that the natural efficient cause for having recourse to historical knowledge is a hunger that is indicative of a need. Note also that Nietzsche speaks of the needs of individuals as well as nations, thus allowing for a possible divergence between the two. Nations and individuals may not have the same needs, and he wants to allow for this disharmony: he does not plainly give priority to the needs of society, since the progress of man depends to such an extent on the innovations of great individuals. But this leads back to the first point: those things that make men human, that give men their distinguishing features, do not come from nature; original man is little different from the beast. Instead, they are the product of two forces: history, and the creativity of great men. Thus culture can be regarded as an artistic unity of the life of a people; it is a second, or third, or fourth nature, not a first or original nature. Nature does not bring man into such a mould, and every culture is an artificial and highly individualized harmony that is compelled at some time to burst asunder and give way to flux. Finally, and not least important, we should mention the bellicose language with which Nietzsche calls German youth to an attack on the dominant modes of German intellectual and cultural life. This intemperance of speech was to increase and become more typical once his epoch-making destiny appeared clearly to him. In order to build it was necessary to destroy.[21]

I propose now to turn from this little-known early Nietzsche directly to the Nietzsche of the last years. By then he was hard at work transvaluing values in a much more radical sense, he was the philosopher-legislator. Two interrelated questions stood at the foreground of his attention: what is the value of morality, and what is the value of truth? The first question is answered most fully in The Genealogy of Morals, and it leads towards its end to the question of truth and objectivity which forms a more predominant part of a work published the year before, Beyond Good and Evil. Since the moral problem is somewhat less difficult to follow, we shall begin with it, and we shall end by perusing the message of Nietzsche's masterwork, Thus Spake Zarathustra.

The Genealogy of Morals (1887) is Nietzsche's principle historical writing, the highest example of critical history, guided, of course, by a constructive intention. This intention was to alter radically the course of mankind. The Genealogy is a critique of morality, and it can only be such because Nietzsche has already discovered the true criterion by which to weigh morality. That criterion is the maximum potentiality of the power and splendor of the human species. The vital word is power, human power. But if the proper standard is already known, why try to write a history of morality? Nietzsche replies that an adequate critique must show the conditions and circumstances out of which values grew, and how they involved and became distorted. But why try to show how mere errors originated and changed? The following reasons occur to us. First, Nietzsche wants to demonstrate the natural character of all morality: it is the product of man, and only natural causes can account for it. His second aim is to demonstrate the kind of causes that account for the various moralities: the causes of morality are themselves non-moral, or if judged by the standards of any given morality, they are immoral. When we know this we are freed not only from the supernatural but from the moral itself; we understand the basis of all moral things. Finally, he wishes to make evident the direction that the new morality must take. The new morality has a necessary relation to its predecessors.

Nietzsche himself informs us of the principle of historical interpretation that he employs and that should be applied in every historical investigation, whether its object be the evolution of a species, an individual, an organ, a cultural institution, a habit, etc.[22] This principle, we may say, is the final outcome of modern non-teleological philosophy and science. It teaches that there are no fixed forms or final ends. All things or parts of things come about through some act of overpowering, and change by acts of overpowering and being overpowered, whether in whole or in part. One cannot infer from the present function or utility of a part that it came about for that purpose, nor can one infer from something's coming about that it did so for a certain final function or purpose. Origin and function are utterly disparate, and there are no final ends. The process of overpowering goes ever onward. Even the death of an individual, Nietzsche suggests, is to be explained in terms of the organism's effort to maximize its power rather than to succumb.

One wonders whether this historical principle could be applied to philosophical thought itself, and indeed we later learn that the act of philosophizing, far from being exempt from the principle, furnishes its highest manifestation. But let us first see how it is used in the area of morality. No fixed forms, no final ends -- Dewey drew this conclusion too, it is not an arbitrary invention of Nietzsche's; and classical philosophy, against which the modern revolution in thought occurred, is its antithesis.

A genealogy of morals should begin with first things, or at least with the first men. We notice that Nietzsche, unlike Rousseau, never provides a full description of first or original man in any one place. In addition, the three essays of which the work consists are not arranged in the order of man's development. This can be inferred from the following facts: the slave morality featured in essay #1 develops out of the morality of a priestly aristocracy. Priests imply religion, but for a good part of the second essay, pre-religious man is treated, i.e. man at an earlier stage. Again, in the second essay we are told that the aristocratic races, from whom aristocratic morality arises, were formed not in the "primeval and longest period of the human race" but in its middle period. Finally, most if not all of the scattered references to original man occur in the second essay. The first and third essays, then, are meant to be fitted into, or onto, the second. Even so, the chronology never becomes completely clear.

Let us collect the scattered comments about original or simply natural man.[23] Man begins without a memory, without a steadfast will, without a sense of obligation or conscience. He is the slave of momentary desire, he is "wild, free, prowling man," an "innocent beast," perfectly adapted to the "savage life of war, prowling and adventure." What moves him is the "instinct of freedom," which is only the will to power, i.e. the will to master, to subdue, to give a new form to the things around him, especially to other men. He delights in cruelty towards other men, and the first personal or social relation of man to man is exchange: family life or friendship as social relations rather than relations of mastery are not, Nietzsche implies, natural to man.

Nietzsche is only trying to draw some conclusions from the theory of evolution, which he interprets as requiring that man is not

radically distinguished from other animals by nature. Original man is a-rational, a-moral, and anti-social; he is likened to the carnivorous rather than the herbivorous animals: a beast of prey. This is the beginning point, and the problem is to explain how morality, or the diverse kinds of morality, come into existence and develop. The first thing to be explained is the idea of having a duty, an obligation, an "owing." Nietzsche traces this to a long development within man's earliest social organization, the tribe, clan or commune. The central idea in "owing" originates in the exchange of goods, when something is promised, and expected, in return for something else. Slowly man learns to promise, he agrees to be punished if he fails to live up to his promise. In order to make sure of promise-keeping, to discipline men into it, recourse was instinctively had to the infliction of pain on him who fails to keep a promise. For a creditor to exact his pound of flesh from a debtor was his way of retaliating, and no keener pleasure could be given to him than this right to inflict pain on the defaulted debtor. Again, in general proof of the severity originally used to make men remember their promises, are all ancient penal codes. Thus Nietzsche's reflection, an oft-repeated reflection: "How much blood and cruelty is at the foundation of all"good things"!

Men want to live in societies in order to gain protection against animals and other men. This they learn after some experience: it is not fellow-feeling or a natural affection that draws them together. But once the clan or tribe exists, certain rules must be followed if it is to carry on. Restraints are necessary, and when someone violated a prohibition, angry punishment followed. The criminal who accepts society's advantages and then violates its rules has broken a promise, hurt his neighbors, and forthwith is treated as an outlaw, an enemy pure and simple. The modification of such punishment comes about once again through something learned from the exchange of goods, and that is the idea of equivalence. One can be punished by an equivalent of the harm he has done. Justice originates as the will of equals in power to settle their grievances through some kind of equivalence and to force weaker men to settle theirs. Law originates with the ruling element, the strong, in a community. It is a declaration of what is just and lawful, and what is unjust and unlawful, and it occurs when the community grows united and strong enough to regard harms to individuals as harms to itself. Crime becomes impersonalized, and the strong try to find ways of limiting intra-communal disputes, an effort opposed by the resentful weak, the merely reactive, who would like to prolong the "senseless fury of resentment." Law is the work of the strong, and the weak are its enemy.[25]

In the longest part of his history, man lives in tribes and is subject to the morality of custom, that is, of the "old ways." Only at the end of the long discipline involved does there emerge what we call the free individual who can promise, will, control himself -- a great because a more powerful achievement. States come into existence when strong tribes conquer and enslave weak ones. By this time races of varying strength or masterdom had been formed, and a tribe of the strong, an aristocratic tribe, had by then already developed a sense of its strength. When such a tribe confronts its inferiors, it originates the distinctions, and the language, of "good" and "bad." The conquerors or aristocrats are good, i.e. they are strong, manly, courageous, wealthy, clean, and their servants are weak, despicable, mean.

Now Nietzsche does not yet attribute a soul, in the sense of an

inwardness, a self-consciousness, to the aristocrats. The soul grows in the slaves, who now have no further room to develop their own instinct of freedom. This urge to subdue or master now becomes internalized, it works on the self, it works on the thoughts of the self, it begins to reason and imagine, it develops ideals by which it enjoys being cruel to the self; in short, a soul is generated, and "the aspect of the world was radically altered thereby."[26] The only event comparable to it would be the origination of the superman which it makes possible.

Nietzsche proceeds to show how religion is born out of an "owing" to ancestors, and how the bad conscience, which is identical with the soul, ultimately develops slave morality, the ascetic ideal and finally Christianity, i.e. the complete overturning of aristocratic ideals. What we have to keep in mind is the non-purposeful character of this entire development, and also the degree to which it has no fixed end. Once the soul developed, man perhaps more decisively than any other animal, had no upper limit. The superman represents a conscious attempt to give him a limit, a maximum height, just as nature had given him his beginning point. Notice also the implication that the superman, a new aristocratic commander, will restore the aristocratic morality on the level of the soul, that is, on the basis of something the slaves provided. It would not be unfair to regard him as a dialectical synthesis of these two elements. Thus Nietzsche's formula, "Caesar with the soul of Christ."[27]

The process by which moral distinctions develop is non-teleological, it does not from the outset aim at a definite end. In addition, it is made possible by cruelty, enslavement, self-torture, etc., each unforeseen stage generating its successor. And the key to the whole development is the will to power constantly working under different conditions, originally beginning as the will to subdue and subjugate things outside of ourselves, human beings especially, and then converting to a will to subjugate or master ourselves. The soul is a struggle to master ourselves and to master others as well: thus the inversion of aristocratic values performed by slave morality. All morality, then is only an expression of the will to power. Altruism, Christian love is born out of the hatred for superiors and for oneself, and the only consideration for others that has a direct origin in health rather than weakness is the respect of the strong man for his equals and his disdain for his inferiors.

What would be the practical result of accepting this teaching, as Nietzsche anticipated it? He always claimed to write for the few, that is, for the strong-willed and the deep-souled. Only they could understand him, they would see that the "will to power" is indeed the truth of their being in all its activities, however much this fact has been hidden from them by training and self-distrust. History will prove that man is by nature and always an innocent being, unbound by transcendent beings, ends, rules. It will help restore this innocence, but for the first time a fully conscious innocence. Nietzsche's followers will seek power knowingly, they will seek to maximize their own power and splendor both inwardly and outwardly. And they will do so knowing full well that great things depend on blood and cruelty. We are reminded of Hegel's "slaughterbench of history," and further of Machiavelli's teaching about the immoral origin of moral orders. This ultimate parent of Nietzsche's moral-political doctrine, in union with modern non-teleological natural science, was known to Nietzsche himself, and his most astonishing practical appeal also shows a fine Machiavellian lineage: it is a call to his followers to conquer the world and rule it tyrannically.[28]

The basis of this tyrannical teaching is the denial of the objectivity of justice, and this denial stemms from the primacy of the will to power.

> To talk of intrinsic right and intrinsic wrong is absolutely nonsensical; intrinsically, an injury, an oppression, an exploitation, an annihilation can be nothing wrong, inasmuch as life is essentially (that is, in its cardinal functions) something which functions by injuring, oppressing, exploiting and annihilating...[29]

It is a corollary of this principle that conditions of legality can be only exceptional conditions and are subordinate to the will's striving to create "larger units of strength." A legal world-state aimed at ending all fighting would be hostile to life. But mastery of the world is a lofty aim by which to engage the ambition of the future aristocrats.

In the last essay of the Genealogy Nietzsche describes the ascetic priest and the ascetic ideal and asks about the possible sources of opposition to them. He does not find such opposition forthcoming from philosophy or science or history. All are infected with asceticism, all are imbued with some element that makes them flee from life, from the instincts, from the earth. The last refuge of the ascetic ideal is the will to truth, the belief in the value and possibility of objective truth. This valuing of truth is Christianity's last remnant. Why is it ascetic? Because it establishes a realm that is beyond man's control, beyond his will, and man suffers by comparison with this transcendence. Man cannot feel completely at home as long as he is judged by something that does not issue from himself. He needs something to love if his life is to have meaning and direction, but that something must not denigrate any part of him, it must not lift the intellect above the body.[30]

The possibility of objective knowledge and the related question of the character of the philosopher both receive considerable attention in Beyond Good and Evil (1886). A veritable arsenal of irrationalism is put at our disposal as Nietzsche uncovers the subconscious determinants of philosophic and scientific thought. The needs of man, the needs of races, the needs of a period, the needs of individuals are the crucial producers of human thought: thought is largely the work of our subconscious selves, it is "human" through and through. In short, there is no objective knowledge, and all knowledge that claims to be such cannot substantiate its claim. This is not to say that certain of these falsities posing as truths may not be necessary to man. The basic ones are necessary, but only as a framework without which human life could not go on.[30]

These theses involve certain further issues. First, is the claim that there is no objective knowledge itself true? How can it be true? Second, are other truths presented as such by Nietzsche objectively true, e.g. those about the will to power, the history of morality, etc.? Finally, how can Nietzsche himself live if he knows the "humanly" necessary truths to be illusory? Nietzsche draws certain consequences from his critique of objectivity: knowing is not the passive and motionless receptivity of a non-material mind to something outside it. As he expresses himself towards the end of Genealogy, all knowing is a relating to the knower, an interpretation arising from his emotions, instincts, needs. Knowing is an active process in which we imbue something with a meaning from our own perspective, and no other knowing is possible to men.[31] It follows that knowing varies from individual to individual, from time to time, and the question immediately arises as to how any

knowing can be false. Falsity would itself vary with individual perspectives or needs, and the result seems to be chaos. Indeed, Nietzsche goes so far as to maintain that every Philosophy has at its root a certain set of values or intentions from which its whole direction is derived. The corollary of this individuation of truth is the individuation of good, conveyed in his oft-repeated maxim: be yourself, give a law to yourself, there is not <u>one</u> way.[32]

If all philosophy has an active urge, a valuing, i.e. a morality at its root, if every philosopher is driven by the most spiritualized form of the will to power, which is the will to make over the universe in his own image, then this should hold for Nietzsche's own philosophy as well. Its central theme is the will to power. Of what is this expression? Of course of Nietzsche's own will to power, and that this was in fact his deepest urge he readily admitted. But then in the strict sense his philosophy is purely personal, it is only his and can make no better claim than being "Nietzsche's thoughts." These thoughts would represent the purpose or ideal to which he is committing himself, in which he invests his full being. In this direction lies something like existentialism, and Nietzsche did at times employ this self-interpretation.[33] On the other hand, it is impossible to miss the claim to something more in Nietzsche's writings. That something more is truth, taken in the <u>old</u> sense, That all knowing is from a perspective, that the will to power works in all living things, that morality has a certain status- these cannot merely be Nietzsche's truths or even truthes relative to Nietzsche's time. Somehow in them there occurs a coincidence between the real character of things and the philospher's knowing.

Yet there is still a sense in which this <u>is</u> Nietzsche's knowing, for the coincidence in question was not always available to the human mind and is still not available to most minds. The time had to be right- history had to develop up to a certain point- and the individual had to be right. The time- e.g. only a European who had the cultural heritage of Christainity and of modern critical philosophy and who lived in an age of decline- and the individual, one who had to have experience of both sickness and health, one who could experience in himself the various perspectives from which men see things, and one who, above all, had to have an imperious will to power that would drive him intellectually through every kind of prejudicial belief and emotion. Only through such a conjuncture could real truth be achieved. The beholding of this truth required, as its condition, a very great activity of soul.[34]

This position has the merit of at least an apparent consistency. The only event comparable to the revolution in thought thus occasioned by Nietzsche's thought would be the first emergence of the soul itself in the slave classes of old. But its significance is even more radical than that: for the first time a being appears in nature who not only thinks he knows but knows. And the new knowledge must be called objective, however much it depended upon interpretations, values, etc. as its instruments. And it is absolute, however much it depended on prior historical developments. But of what kinds of things can there be objective knowledge, and how is such knowledge proven?

In several of his writings Nietzsche tells us that the only thing we can know directly is our own will in its various forms. At one point he goes so far as to call thinking only a relation of our desires and passions to each other, and this of course is the only position consistent with maintaining the universality of will to power. Whether this is a possible understanding of any thinking that is at the same time a knowing is another story. But let us follow Nietzsche's point that we are directly

aware only of our emotions, impulses, desires, willings. He adds that we cannot go further in the direction of the knower of the things known. We cannot know a self that wills or even show that such a "self" substance exists, and we cannot know any object apart from the interpretation we humans put on it, or even show that such a thing-in-itself exists. The result is a kind of phenomenalism, where all we know is our experience, and the core of experience is valuing or willing. (We ought to mention that Nietzsche was not thoroughly satisfied with this position: he cites the difficulty of claiming that the eye is the cause of our seeing phenomena and also only phenomenal itself.)[35]

How do we know the limits of human knowledge? By noticing the difficulties to which the cognitive claims of both the senses and reason are subject. Nietzsche accepts, in other words, the original Cartesian manner of posing the basic problem; which is that of moving from awareness of our own experience to awareness of being. But he claims to go far beyond even Kant in reducing the area of what we can truly know. If we can only know our willings and the projection of our willings into other things, psychology, especially historical psychology, becomes the queen of the sciences. But what is the consequence of all other knowledge and for life? One alternative is nihilism: "Nothing is true, all is permitted."[36] In other words, there is no objective knowledge, and there are no objective values. This leads to aimlessness and despair. The other alternative is to rejoice. We are the source of all valuing and of all apparently objective knowing. The meaning of things is given to them by man, and once man knows this he is free to create for himself goals of dedication which are in keeping with his whole being. Each can be himself, give his own law to himself. But this ultimate variety does not suffice for Nietzsche. There is a gradation of men, one which corresponds to the gradation in the problems they cope with, and this at least at first, refers much more to their internal than to their external power.[37] The power of men is the criterion for the hierarchy of men. Ton construct a proper ideal for mankind as a whole involves constructing an extension of what is at work in all men: the will to power. The single ideal which is consistant with reality is the Superman- and ideal which by its nature will either bring about the subservience of, or eliminate, all other goals. To will superman as the object of our love and dedication is the thing man must do when for the first time he consciously creates his own ultimate goals. Man must will to surpass himself. But the term "man" is deceiving. It is the highest men of the present to whom Nietzsche appeals: all other men can only be their instruments or means.

The highest are to will a goal projected out of their own stage of development, a surpassing of themselves. A determined effort is to be made to do what nature does not do. Nature is indifferent, it creates and destroys without consideration, it does not care about the highest men. The past history of man shows, in fact, that the medicre, the weak, the stupid outsurvive the strong: witness the triumph of Christianity. This is the main reason why the highest must now combine the highest physical with the highest spiritual power: it is to assure the predominance of their own type. There is no place for the humanly highest in nature's scheme. Nature has no scheme, it is not a cosmos. Only man cares for man, and only the highest men for their own type.

Nature did not intend to pring about the superman, the possibility of which came into existence as the result of a non-teleological process and the actualization of which, through the willing of thehighest, constitutes a revolt against nature's ordinary course. Yet there is a sense in which nature prevails in the new goal. All natural things will power, supermen more that the rest, and they also follow the promptings of nature in themselves

when they discipline and master themselves with a view to their own perfection.[38] Thus, to will the superman is, for the highest men of the present, to will an extension of themselves, but it is to do for themselves what nature as a whole would not do.

Nietzsche and his supermen will power, the utmost power. What would be the greatest power they could strive to attain? Nietzsche acknowledges, in Thus Spake Zarathustra, that he is no lion; his power is that of original discoverer whose words help to break down the old and inspire the new. "And blessedness must it seem to you to press your hands upon millenniums as upon wax..."[39] Nietzsche's internal power is that of the philosopher, his external power is that of the critic and teacher. Both are his work, and both must be desperately pursued simply because of their utter singularity in the history of the universe. What there is to know of the nature of things is not in principle available to the best minds at all times, and in fact, since the universe of things-in-themselves is not itelligible to man, theoretical knowing or contemplation must lose its old supreme dignity, and creativity or the re-shaping of the actual world becomes the summit. Stated in another way, the character of the Biblical God wins out over the character of the Aristotelian God.[40] If philosophy is really only the most spiritualized will to power, the urge to become the first cause of all things, then the prospects of Nietzsche's own success or failure will understandable arouse a very considerable amount of anxiety and desperation in him.

We can see how why Zarathustra refers in his last words to his striving after his work rather that his happiness. To be concerned about changing the world is necessarily to be unhappy. But was this not implied from the very beginning once the will to power became the driving force to which men were to give their whole heart? Everyone striving for power has to be worried about being overpowered, he must constantly seek to extend his power. But the existence of anything independent of his power threatens his power. He must therefore strive for omnipotence. Nietzsche's relation to the Bibical God is manifest. This raises the question as to what man can or should overpower. Can he change the past? Can he eliminate evil? Can he overcome his own mortality? Or, in general, can he become the master of nature?[41]

The last phrase reminds us of Francis Bacon, whom Nietzsche calls the "first realist in thehighest sense of the word" in Ecce Homo. Bacon wanted an experimental natural science to extend man's control over all things, permitting him to use or remake them as he wills. Bacon wanted to elevate man above all else, to increase man's power in an unlimited way, and so does Nietzsche. Yet in Zarathustra it is quite striking that nature, unaltered nature, provides Zarathustra with the setting he needs. External nature, or nature at large, receives a human interpretation, but it is otherwise let alone. As for Nietzsche's attitude toward modern scientific technology, that mechanism for the conquest of nature, it never seems to come out fully and clearly. Of course he has no sympathy whatsoever for "raising the standard of living," or for elevating the working man. But he realizes that the power of modern man, his power to wage war in particular, is inexorable bound up with technology. Could the new Caesars attempt to win global supremacy with pikes? Once achieved could it be maintained with pikes? By depending so crucially on the actual historical world, then, Nietzsche is forced to accept the scientific conquest of nature. Nevertheless, it is clear from Zarathustra that even the superman needs to set limits to his own striving for power. Zarathustra needs the sun, the earth, his animals, he even needs suffering and antagnoistic forces in the world and in himself. Joy can only come about through the overcoming of antagonisms, i.e. through suffering.

It cannot will itself without willing suffering. And by action rather that speech Zarathustra seems to add that man's joy and work requires things that are not the direct object of his struggles: he needs a natural environment. In on place Zarathustra asserts his role and blessings: "to stand above everything as its own heaven, its round roof, its azure bell and eternal security." But Zarathustra himself needs an enviroment, he needs the actual, albeit ephemeral, heavens. But he also knows himself and his influence to be ephemeral. These and similar considerations lead Nietzsche to posit, and attempt to prove, the eternal return of all things in exactly the same order and detail as always. So act that you would wish for the eternal return of your action, your joy, and of all other things too! This is Nietzsche's highest motive, and at the same time the source of his consolation and his sense of limits. It is his "amor fati," the joyous acceptance of all that sulminates the greatest attemptto overpower or reject all.[42]

Leaving much unclarified in a philosophy of extreme subtlety, we turn, finally, to Nietzsche's view of the politices of his own day. His biew of the condition of the highest man in his own day- European man- is absolutely central to all his efforts, since man and man's improvement are absolutely central to all his efforts. Now what lies before Nietzsche? European man is in a state of tension, but the strongest forces actually present are dragging him toward total degeneration. Man is heading toward the Last Man -a condition where all dedication to high ideals has ceased, where the comfort of living in a herd and satisfying physical wants with complete success prevails. Christanity has faded into democracy, liberalism. Socialism and materialism, usering in the era of the common man, of complete vulgarity. Are there any counter-forces? The old aristocratice remnants have themselves succumbed. They have compromised with the people, given them power. What is worse, they have lost the will to rule for themselves: they want to rule for the common good. All is narrow and petty in the modern world. Actual politics is petty and mean, including the rivalries of European nationalities one with the other. In short, no great ideal, old or new, rules the political world. The same in true of the intellectual world. Philosophy has shrunk to epistemology science has lost its great faith in being able to show man how to live. Again, no great, inspiring ideals.

Mankind is at a dividing point. It can go, as its strongest tendencies are forcing it to go, toward nihilism and animal security. Or it can follow Nietzsche and return to human greatness, to heroism on a higher level than ever before. But his requires that a few be amancipated by Nietzsche from the very great temptations of the non-heroic life. They must be freed intellectually and stimulated emotionally. To do this, Nietzsche knowingly runs the risk that his teaching may have other disturbing effects. The risk is worth it, there is no other way. Nietzsche must assist in the destruction of the old in order to make way for the new. What will the new be like? We cannot avoid Nietzsche's concentration on politics, on war, on conquest, on ruling men tyrannically, that is, for the sake of the rulers alone. This is plain for all to see in the last works; indeed, it is a strain that was present from the very beginning: witness Nietzsche's very early work on the Greek state. Moreover, it is full consistent with his understanding of the will to power and his admiration for the originals of all aristocracies, the primitive blonde beasts of prey. His call, then, is for new conflagrations, Caesarian trainers of civilization, the unity of Europe under new Napoleons or Caesars (this is his "Good Europeanism," and the struggle for the mastery of the world, i.e. politics on a global scale. A new absolute aristocracy and a new hierarchy of men and values should be brough into being. The new rulers will have to be harder and shrewder than the conquerors of old, but their most radical difference

will be their souls: they will be the subtlest and most relentless of philosophers, lovers of the most beautiful things, lovers even, or perhaps especially, of mankind. They will combine philanthropy with the severest egoism - the two are inseparable.[43]

Nietzschae was no Emerson, nor was he an Alfred Rosenburg. He did not follow Socrates. Dionysus was his god, and Dionysus, as Nietzsche saw him, dontained a Socratic element transfigured by something additional, some kind of wildness. We cannot say that Nietzsche intentionally fathered fascism. But we can say that he intentionally fathered some of its essential elements, though he would have hated those unsuspected elements which necessarily accompanied the ones he himself sought. For it was evident from the beginning that a new barbarian chieftain was a more likely occurence than a Caesar with the soul of Christ. But tyranny, global war, cruelty, the cult of the physical, myth-making were all crucial to Nietzsche's preachment: only the tyrant and his henchmen, the antisemitism, the degradation of the spiritual the sheer trutality would not have been acceptable.

In a case like this, moral indignation would only be a shield for our complacency. Nietzsche was not an erratic event in the history of modern though, he was its logical extension- and a much more logical extension, may I say, that John Dewey, with whom he shared the non-teleological premiss and the joy at the liberation it promised. Man liberated from fixed ends, man satisfying his changing needs, man creating his own destiny.[44] That all sounds very familiar. Human desire then becomes the standard- in Nietzsche's terms, the will to power- and a very shaky standard it is too. Well, we can go the way of logical positivism and give up the game entirely. Or, we can go back to that very Socrates whose rationalism Nietzsche rejected in favor of Dionysus. If Machiavelli, Descartes and Bacon lead to ourselves, we ought to re-examine the tradition they cooperated in attacking, the Socratic tradition. We may then be able to learn why severity, aggressiveness and that highest of virtues in Nietzsche's eyes, magnanimity, had to be subordinated to something higher than themselves, something intrinsically gentle. We may also discover how knowledge and philanthropy- including the philanthropy to which Zarathustra testified- are to be accounted for. But in this task we will at least require Nietzsche's unswerving desire for truth.

Notes

The Modern Library Giant, The Philosophy of Nietzsche, is referred to for Thus Spake Zarathustra, Beyond Good and Evil, The Genealogy of Morals, Ecce Homo, and The Birth of Tragedy. For The Use and Abuse of History, the Little Library of Liberal Arts, 1949 edition, is cited. All other references are to The Complete Works of Friedrich Nietzsche (N.Y., Macmillan, 1924). Titles are abbreviated in the notes.

1. See A.J. Ayer, Language, Truth and Logic (N.Y., Dover Publications), pp. 97-9, 22, 112.
2. Charles Frankel, The Case for Modern Man (Boston, Beacon Press, 1959), p.60.
3. Ibid., p. 65; also p. 68.
4. Ibid., p. 83; also p. 74 ff. and p. 78 ff.
5. Abraham Lincoln, The Writings of Abraham Lincoln (N.Y., Lamb Publishing Co., 1905), vol. 1, speech of 1837, pp. 160, 154-5.
6. Use, pp. 67-8.
7. Ibid., p. 19.
8. Frankel, op. cit., pp. 65, 68, combined with pp. 133-5 and p. 142.
9. Use, pp. 15, 16, 30, 49, 51, 76.
10. Ibid., p. 26; also, pp. 20-9.
11. Ibid., pp. 36-71 (parts V to IX)
12. Ibid., pp. 19, 76, 77, 49.
13. Birth, pp. 1012, 1017, 1019, 1021 (sections 12, 13)
14. Use, pp. 57-8. Also Human-All-Too-Human, in Works, vol. 6, pp. 39-41.
15. Use, p. 51; also, Birth, pp. 1057-8 and Ecce, p. 943.
16. Use, p. 47.
17. Ibid., p. 17.
18. Early Greek Philosophy, in Works, vol. 2, pp. 96-114; Birth, p. 1085; Ecce, p. 869; Genealogy, p. 703. Re Hegel and the historical sense, see Beyond, pp. 499, 526-8, and Human, pp. 42, 118.
19. Use, p. 28.
20. Ibid., p. 30
21. Ibid., pp. 32, 29, 77.
22. Genealogy, pp. 692-4.
23. Ibid., pp. 651, 672-3, 676, 684, 686, 701, 704-5, 737.
24. Ibid., pp. 674, 737-8.
25. Ibid, pp. 688-91.
26. Ibid., pp. 703-6.
27. Will to Power, in Works, vol. 17 (?), sect. 983; see also Genealogy, pp. 714-16.
28. Genealogy, pp. 802-4; Beyond, pp. 506, 510, 553, Will, sects. 304-6.
29. Genealogy, p. 691; Beyond, pp. 577-8.
30. Beyond, sections 4, 6, 9, 10, 14, 20-2, 260.
31. Ibid., pp. 420-1; Genealogy, pp. 743-5.
32. Zarathustra, pp. 35, 63, 95, 215, 217, 319.
33. Beyond, pp. 405-6, 427-312; Zarathustra, p. 217.
34. Ecce, Why I Am So Wise, Why I Am So Clever; Genealogy, pp. 790-1.
35. Beyond, sections 11-19, 36.
36. Genealogy, p. 730; Zarathustra, p. 305.
37. Beyond, pp. 516, 518, 524, 554, 587, 590, 596.
38. Beyond, pp. 530, 536-8, 476-8, 518. Homo Natura is at once preserved and transcended. The result is innocence on the level of the highest self-consciousness: new self-conquest and new liberation of the instincts go together. See Zarathustra, pp. 6, 319.

39. Zarathustra, pp. 240, 218, 162; Beyond, p. 493; Will, sects. 964, 972, 997, 999; Ecce, p. 898.
40. Zarathustra, p. 91; Beyond, p. 519; Will, sects. 911, 999.
41. Zarathustra, pp. 153, 172, 220, 256 ff., 362-4.
42. Ecce, p. 892; Zarathustra, pp. 168, 183, 244, 246-7, 357-64; Will, sects. 1053-67; Genealogy, pp. 736-7; Beyond, pp. 427, 512-19, 599. Nietzsche goes so far as to call the new philosopher-rulers tempters and experimenters, but their main interest is themselves and mankind, not external nature. This tends to conceal the question of the relation between the transformation of man and the transformation of external nature.
43. Beyond, pp. 534-5, 590, 608-11; Zarathustra, pp. 3, 4, 135, 177-8, 210, 250 ff.
44. Compare John Dewey, Reconstruction in Philosophy (Mentor Book, 1950), pp. 71-5, with Zarathustra, pp. 30, 91, 183, 249 and Genealogy, p. 789.

PROBLEMS OF RESEARCH IN SOVIET FOREIGN POLICY

by

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Let me begin by stating that, in my opinion, there are no essential differences between problems of research and problems of teaching, in this or in any other field of study. In making this bold statement, I start from the assumption that whatever can be investigated can be taught. To be sure, the most competent scholar may find himself teaching in an institution that lacks basic facilities for teaching, such as books, periodicals, and documents, or students who can read them in the original language. Outside of this difficulty, which is not restricted to our field, some might think of the peculiar influence of political bias that hampers the teaching of Soviet foreign policy. But bias is as much a problem for the researcher and the teacher as for the student.

A survey of doctoral dissertations in the field of Soviet studies being written by political scientists will disclose that most of the work done in this field deals with foreign policy or the related problems of international communism. I do not know what the reason is; but we can speculate about it. Is it because Soviet foreign policies are considered more interesting than domestic affairs, perhaps because they affect the outside world (i.e., us) more immediately? If this is the reason why this area of investigation attracts so many budding scholars, I should like to warn them that they may be in error, though that is a matter of opinion. Perhaps the belief is that problems of foreign policy are more researchable in that more data are available. Whether or not this is the reason, I should insist that this belief is quite fallacious; and the dearth of really good scholarly works on Soviet foreign policy surely supports this opinion of mine.

It is, of course, quite easy to write a chronicle of overt Soviet acts and pronouncements affecting Moscow's relations with the outside world; and the chronicle can be completed by listing all such acts and pronouncements affecting the USSR that originate outside the Soviet Union. There is a problem of selection here, not only because the sheer bulk of pronouncements is forbidding, but also because the chronicler will have to decide which elites in the non-Soviet countries are important enough to be taken into consideration. Nonetheless, the chief prerequisites for the accomplishment of such works are patience and a knowledge of Russian. An excellent example of the type of study I have in mind is Max Beloff's indispensible work on Soviet foreign policy from 1929 to 1941.

One can further subject easily accessible material of this sort to various methods of quantitative research, for instance, content analysis. Harold Lasswell's famous article on Soviet May Day slogans is a good example of the kind of work which could be done in large volume. The kind of painstaking sleuthing which Myron Rush has done in tracing the rise of Khrushchev might yield significant results when applied to Soviet pronouncements and overt acts in foreign policy matters. Perhaps we should not speak of the two studies in one breath. Lasswell's article is a straightforward application of a research gimmick to a very limited set of data; and its results can do no more than to confirm information that had long before been derived by more traditional methods. Rush, in contrast, has subjected an immense wealth of data to the much more complicated and sophisticated test of his and his associates' intimate knowledge of Soviet ideology. Patience and familiarity with the language must here be supplemented by an acquaintance with Soviet jargon that only very few individuals can hope to attain.

That research of this kind, valuable though it is, does not present us with more than first essential steps toward an understanding of Soviet foreign policy need not, I trust, be emphasized. The overt acts and pronouncements of government officials which become the chronicler's material are, as everyone is aware, but the surface manifestations of a hidden political process, which many if not all of us consider far more interesting than treaties, notes, and public oratory. Any of you who had occasion to examine archival material from foreign offices will know about the tremendous amount of negotiation, correspondence, consultation, and other informal work that precedes the formulation of overt foreign policy acts. All of us are aware how important these operations behind the scenes are for an understanding of foreign policy. Diplomatic history cannot really be written without a study of foreign office archives and the memoir literature that usually supplements these documents. I deliberately say "diplomatic history" because foreign policy archives hardly ever are open to public inspection or even to scholarly research except decades after the event. This applies perhaps even more to matters concerning Soviet foreign relations than to those among Western countries, if indeed there is a difference in secretiveness. The reason for this is that the Soviet government is especially careful to keep its governmental archives locked; and, unlike some Western governments, it faces no domestic political pressures to publish selected dossiers, be it in order to discredit the former "in" party (as in the publication of the Yalta papers) or to justify a present "in" party's policies (as in the Truman administration's Whitebook on China). But, pressures of this kind notwithstanding, Western governments too can be expected to be most reluctant to publish documents concerning their relations with the USSR, precisely because dealings with Russia are so controversial and delicate a political matter.

Still, the fortunes of wars and revolutions do unlock governmental archives; and the Russian files of the German foreign office have revealed diplomatic maneuvers which normally would surely have remained secret. I have no desire to minimize the importance of the documents on German-Soviet relations; but it deserves to be pointed out that here too we are faced only with what I have called the surface manifestations--not indeed of the German side, but of Soviet policy.

To dig more deeply into the making of foreign relations requires more than the data that might satisfy the diplomatic hostorian. It requires that foreign policy be regarded as part of a larger whole, which may be called the political structure, the culture, or whatever other total system the investigator prefers to take as his matrix. In other words, the attempt to understand foreign policy requires <u>interpretation</u>. While this requires a structuring of empirical data that transcends empiricism, it too is subject to verification, albeit to a limited degree. My point is not only that interpretation is a legitimate step for the social scientist to take, but also that some interpretations are more valid than others, either because they are more plausible in the light of various kinds of general knowledge we may possess, or because events prove them to be correct. Furthermore, regardless of plausibility, certain approaches to Soviet foreign policy may be more useful than others for various purposes, such as, for instance, the prediction of future action.

What I propose to do in this paper is to survey and evaluate various interpretations of Soviet foreign policy. In other words, I intend to examine the principal determining factors that might be said to underly this policy.

1. Tradition.

A few years ago, academic discussion of Soviet foreign policy was dominated by the controversy whether it should be seen as an aspect of the communist world

revolution or as a continuation of tsarist imperialism. Like many "either-or" problems in social science, this debate was largely meaningless, because in the eyes of the Soviet leaders the interests of the world revolution and the interests of the Soviet national state were largely identical. The issue has since fallen into oblivion--deservedly so, because it was a debate over words, not over substance. And yet, for purposes of analysis it is fruitful to distinguish the motives and policies that can best be explained by reference to Marxism-Leninism from those that seem to be a continuation of traditional (tsarist) Russian policies.

Among the factors making for continuity, geography is obviously the most pervasive one. The geographic environment is so inevitable that references to it tend to be regarded as commonplace; and so constant that it cannot at all help us in explaining changes in foreign policy. All it can ever explain are the recurring problems and the perennial goals: problems such as that presented by Russia's open borders in the European plain or the overlap of ethnic minorities into neighboring countries; goals such as warm-water ports or strategic footholds in the Near and Middle East.

Perennial though geographic facts may be, they are yet affected by technological change. On a shrinking globe, heartland theories are subject to re-examination. If the search for warm-water ports was ever an important factor (some deny this), then the air age may have made it obsolete. If the arctic border of the USSR has, so far, played a minor role, the atomic ice breaker and submarine as well as intercontinental missiles may give it new significance. In short, even the constant problems and goals of Russian and Soviet foreign policy may be changeable; and the question then is to what extent the people formulating this policy are aware of the necessity for change. In any event, the scholar must remain on the alert for them.

In studying the foreign policies of various countries, the influence of another seemingly constant factor has remained thoroughly controversial. I am referring to that hotly debated thing called national character. According to some scholars, the Soviet government behaves like a Dostoevskian character, whose actions, in turn, may be closely related to the child-swaddling Russian peasant of Messrs. Gorer and Rickman. Daring hypotheses of this and the more spiritual kind have not, in my opinion, given the scholar more than the mere suggestion of another dimension within which he might place the study of foreign policies. I, for one, have never found this dimension to be very helpful, but would like to be shown what it can contribute. It deserves to be pointed out that national character even more than geographic facts may be changing; and some students of national character have suggested this to be the case with the people of Great-Russia. Moreover, the Great-Russian peasant from whom Russia's soul has usually been abstracted may not be in power. In his place, there may be a Georgian peasant like Stalin, a Ukrainian coal miner like Khrushchev, a Jewish intellectual like Trotsky, or a Great-Russian aristocrat like Lenin and Chicherin. If, finally, we examine the actual code of behavior derived from national character, say, by Leites, we find it so ambiguous that it helps us very little in understanding Soviet foreign policy.

2. The National Interest.

The line of continuity from tsarist to Soviet foreign policy becomes rather more meaningful when we draw it by referring to the national interest rather than the national character of Russia.

Those scholars who use the concept of the national interest usually take it for granted that this interest is fairly specific, and, further, that it is readily discernible to all those who seriously deal with the making or the study of foreign policy. It seems to me that any examination of the actual policy-making process

proves the contrary: disputes about foreign policy are so ubiquitous that obviously the national interest is not readily discernible. And where there is agreement, it is on the bare fundamentals, such as the need for defense, which all interested groups would accept as part of the national interest.

Still, it is useful to keep in mind that all countries, including the USSR, face certain perennial problems, the solution of which may legitimately be regarded as part of the national interest. The problems posed by the geography of the country are part of this. Other problems are a bit less static.

The continued existence of the nation, i.e., national security, is one such constant goal. Its importance, however, relative to other goals, has fluctuated widely. In the first few weeks and months after the revolution it was not pursued at all and then emerged, beginning in early 1918, when hopes for the immediate spread of a world-wide revolution faded and the Soviet leaders began to identify the goals of the workers of the world with the Soviet national interest. From the beginning of the civil war until the battle of Stalingrad, problems of national security may be said to have overshadowed all other considerations, although for a number of years their relative importance remained highly controversial. Still, all Soviet leaders were obsessed with awareness of Russia's weakness in comparison with the West and sooner or later gave high priority to defense policies. A goodly portion of the history of the Third International can be explained by this preoccupation; so can the repeated Soviet efforts concerning disarmament, and, much more important, the more convential steps of Soviet diplomacy. Soviet power politics from the treaty of Brest to the battle of Stalingrad can be described as a series of defensive moves typical of weak countries that are forced to co-exist with strong and hostile neighbors. Once we have said this much, however, we must recognize that a country in this typical situation must inevitably choose from among various possible courses of action. It can, for instance, attempt to ally itself with the strongest of its neighbors; or it can attempt to form a protective alliance with all the other weak powers; or again it may strive to straddle the fence as a neutral observer, a tertius gaudens watching the strong and the weak among its neighbors fighting and weakening each other. In the first twenty or thirty years of its existence, the USSR has tried all these policies, with varying success, and often pursued two or more of them at one and the same time.

Once the requirements of national security are fulfilled, less urgent aims may become part of the national interest. We can probably say that, in some fashion, all great powers have a latent urge toward expansion, which of course, can take many forms, from brute conquest to subtle domination or economic exploitation. Thus urge can be explained either by reference to the search for security, or by the aim to increase national wealth or to spread a particular way of life. In any event, it ceases to become latent only when the country is strong enough to do something about it.

I make this point because I have the feeling that very often we tend to become overly concerned with the motives and aims of Soviet foreign policy, with "what the Kremlin wants." What the Kremlin wishes to do matters less than what it will be able to do; motivation is less important than capability. And since a reasonably sane set of leaders can be expected to be aware of the limits of their capabilities, they can also be expected to define the national interest in reasonably realistic terms.

If this is correct, then the battle of Stalingrad, the first successful nuclear blast in the Soviet Union, and the launching of the first sputnik are milestones and turning points in the history of Soviet foreign policy. For their implication is that the USSR is now one of the two major industrial nations of the

world and therefore also one of the two most powerful military powers. It stands to reason that this change in status must have had a profound effect on the conduct of foreign relations. Yet here again several alternative courses of action are open to the policy maker; and a knowledge of capabilities does not suffice to predict which one will be taken. The Soviet leaders, for instance, may now feel less threatened than before and may consequently become more willing to co-operate and peacefully co-exist with the Western powers. On the other hand, they may have become more cocky than ever before and hence less and less for peaceful co-existence. In turn, the direction taken by Soviet foreign policy in this regard will be affected by the leaders' understanding of the nature of modern warfare, and by the degree of awareness they have that all nuclear powers may have a mutual interest in curbing and preventing war.

What emerges from this brief discussion is the realization that today more than ever students of international politics or of any country's foreign policy must be familiar with the potentialities inherent in modern weapons systems; with the various types of warfare that can be waged today; and with the strategic thought current in the country under investigation. They must know that to some extent the weapons dictate the nature of the foreign policies, but that alternatives remain. Consequently, further determinant elements must be taken into consideration in order to understand why some alternatives are chosen over others, or perhaps even to venture prognoses as to the choices that will be made.

3. Ideology.

In the beginning of this paper I alluded to the persistent belief that Soviet foreign politics are Soviet foreign politics are easy to study. This belief is based on several misconceptions. One of them is the idea that Marxist-Leninist thought is an infallible guide to action for the Soviet leaders, an operational code or a master plan. The notion seems to be that this code can be puzzled out by us just as it has supposedly been elaborated by the Kremlin; and that for every conceivable political situation there is what our military would call a book solution. On the basis of such assumptions, Leites worked out the Politburo's "operational code," and John Foster Dulles made a collection of Stalin's articles and speeches his bedside reading. In actual fact, however, Marxist theory neither provides a firm conceptual framework for a foolproof definition of any prevailing political situation; nor are there any unambiguous book solutions for situations that have been defined. On the contrary, the doctrine is extremely elusive when attempts are made to derive practical policies from it. Finally, there is legitimate cause to question the role which Marxist-Leninist ideas still play in Soviet decision-making processess.

Such doubts notwithstanding, Marxism still serves as a tool of analysis for Soviet leaders. One reason why it continues so to serve is the fact that its terminology continues to be used; and language cannot help being a guide to thought.[1] Beyond that, it seems to me that Marxism in the Soviet Union is more meaningful as a tool in analyzing the Western world than in any other field of enquiry. We may disagree with the image the Kremlin has of us as much with the self-image they have devised for themselves; but at least the ideology they apply in both instances was designed originally to describe the capitalist world of a

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[1] Incidentally, since this language also serves as the esoteric code through which the members of the Soviet elite communicate with each other, intimate familiarity with it may help us to decipher those of their discussions that reach us on the printed page. See my remarks on the work of Myron Rush, above.

century ago. Its use in analyzing the present-day world of free enterprise therefore requires less adjustments and less mental gyrations than any other application.

The commitment to Marxism implies certain fundamental attitudes on the part of all Soviet leaders, attitudes which may not be completely in harmony with each other. I would list three of them: an assumption of a mutual hostility that can be smoothed over temporarily, but cannot be eliminated except by the annihilation of the West; secondly, the certainty that, sooner or later, the Western world is bound to be destroyed by its own inherent contradictions and revolutionary action by the proletariat, the colonial peoples, and the Soviet world; and, finally, a simplistic conspiratorial view of the West as a more or less cohesive bloc, united by the common goal of destroying communism. However vague these attitudes may be, however much they may be subject to temporary amendments, they do seem to underly the thinking of all Soviet policy-makers; and this alone should be enough to have us make a sharp distinction between tsarist and Soviet foreign relations.

Beyond such basic conclusions, however, the reigning ideology provides no firm guidance to those in the Kremlin who seek to understand the outside world. It may guide them; but it provides ambiguous guidance. Marx and Engels and their followers have used far too many different concepts and methods in their short-term analyses of political situations to make their doctrine a simple scheme. The framework of their ideas has, within the borderlines of long-range dogmas, remained flexible and surprisingly impressionistic. It can therefore suggest various conflicting analyses of the West--quite legitimately so, because, after all, the West is as unpredictable in its international relations as the USSR.

In addition to being a code of communications and a tool for analysis, Marxist doctrine provides its adherents with goals. Does the Kremlin pursue these goals? Are the Soviet leaders still Marxists in that they honestly fight for socialism? Father Bochenski once said to me that there are far more Marxists than we in the West are Christians. I tend to agree with him, but wonder how much that means. The goals established in the Communist Manifesto are secular and might be attainable, whereas those of the Sermon of the Mount, I think, are not. It is therefore easier to come near being a Marxist than to come near being a Christian.

A look at the record is inconclusive. Deeply committed to the aim of furthering the proletarian revolution throughout the world, the Soviet regime nonetheless saw fit to enter into relations with capitalist countries, in order to maintain its own existence. The gap between the uncompromising revolutionary attitudes and the struggle for national existence was bridged by the dogma that the national interests of the Soviet state were identical with the interests of the world-wide proletarian movement. The revolution had found a fatherland, and every class-conscious proletarian was exhorted to support it to his last breath. Support of the USSR was made the acid test of a conscientious revolutionary.

From 1917 to our day, the international communist movement and the Soviet state have been inextricably intertwined with each other in goals, policies, personnel, and institutions. Perhaps it is fruitless to inquire who made use of whom--whether world communism was a tool of Soviet diplomacy or whether Soviet foreign policy was merely one expression of revolutionary aims. Instead of attempting to answer this question, I prefer to assume that both the pursuit of the Soviet national interest and that of furthering the world revolution were undertaken sincerely and seriously, even though the Kremlin appears to have given priority to the Soviet national interest whenever a choice had to be made between the two. Occasionally, the two pursuits and the institutions engaged in them have aided each other. But, as a rule, the aims of Soviet foreign policy and those of world

communism were difficult to reconcile; and the policies followed in the pursuit of these conflicting aims have disturbed and frustrated each other, with the result that neither Soviet foreign policy nor the world communist movement were blessed with outstanding successes for over two decades.

In practice, Soviet national interests were given priority. In theory, the goal of world communism was never disavowed; and today it may be re-emerging as a more practical pursuit, aided now by the development of the Soviet Union into a major world power and by the rapid growth in the intensity and spread of the revolution of our age. The identity of the Soviet national interest with the interest of the world revolution, which may have been no more than phony political rhetoric twenty years ago, may have acquired new meaning.

4. The Nature of the Soviet Regime.

I will come back to these two spectacular developments, which are but remotely connected with each other, in a moment. But first let me discuss one other major determinant of Soviet foreign policy: the nature of the Soviet regime.

The mistaken belief that Soviet foreign policy is easy to study was based, I said, on the assumption that Marxism provided an easily deciphered operational code. Another basis for this belief is the image many of us have of Soviet government as a monolith. Just as early nineteenth century liberals in the West regarded Russia sa an altogether unstructured Asiatic society, and therefore in effect a despotic state without a society (to use their own terminology), so many of us tend to see in the USSR a political body that is essentially undifferentiated, if not in its structure then at least in its policies and, perhaps, also in its policy-making processes. The implications of this monolithic image are not only that there is never any conflict, or that conflicts which might arise are suppressed at once, but also that there is something in the nature of a master plan, a never changing blueprint of Soviet goals and aspirations, with a well worked-out operational code. A further corollary of the monolithic image is the transformation of Soviet foreign policy into a great conspiracy. The notion prevails that all Soviet moves can be understood as the machiavellian designs of one man or a small clique of man. There is, furthermore, a hidden assumption that this leadership is always in full control, and that in world affairs it inevitably takes the initiative. The men in the Kremlin become the evil geniuses of our century. Were it not for them, the world would be without major disturbances.

Somehow related to this is that interpretation of Soviet foreign policy on which the policies of this country since about 1947 have been based. It is closely related because this interpretation, too, regards the Kremlin as a conspiratorial clique whose relationship to the Soviet people is essentially negative: they control, they suppress, they terrorize, they prevent any and all autonomous social life. The policy of containment and its more recent variants was based on the theory that the Soviet regime must inevitably collapse if it is not able continually to expand. Compulsive aggressiveness is attributed to the Kremlin because the Soviet regime, having no positive achievements or benefits to offer its population, can supposedly keep itself in power only by keeping its citizens constantly on their toes against imaginary foreign enemies, and can offer material rewards to them only by exploiting satellites and conquered nations. This theory is derived from an image of totalitarianism based on generalizations of National-Socialist experience. That it applies to the Soviet Union has not been shown convincingly. On the contrary, there are many indications that the contrary is true: that Soviet ideology suggests peaceful alternatives to its adherents; that the Soviet regime tends to be strengthened by peace and threatened by war, and its leaders are aware

of this; and, finally, that the overriding goal of Soviet policies, economic growth, strongly militates against military adventures that could only jeopardize it.

I find the monolithic conception of Soviet foreign policy unsatisfactory for a number of reasons. Let me begin by conceding that rule by one man or by a small clique does indeed characterize the decision-making process which produces Soviet foreign policy. Apart from anyone's idea of ideal forms of government, this type of rule is regrettable from the scholar's point of view, because individuals and small cliques do not so readily lend themselves to analysis and prediction as larger institutional or cultural aggregates. To be sure, interesting attempts have been made, such as those of Robert Tucker, to analyze Soviet foreign policy in terms of the leader's psychological make-up. Yet it seems to me that the behavior of individuals is, on the whole, less predictable and understandable; and I would further point out that our knowledge of the present-day rulers is regrettably sketchy.

Moreover, in concentrating on the monolithic unity of Soviet government, we will be tempted to overlook the dissent and conflict which often precedes the formulation of foreign policy. The Soviet Union doubtless has its great debates over foreign affairs just as we have them; only in Russia they are much more difficult to detect. Even in the 1920ies, when discussion in the Party was comparatively open, some of the major issues of foreign policy were not debated in public. By persistent rummaging in obscure sources, including the information provided by high-ranking defectors such as Trotsky or Ruth Fischer, we can piece together the jigsaw puzzle of debates between Stalin, Bukharin, Trotsky, Zinoviev, and others, over China, or the political role played by the war scares of 1926 and 1927. A good deal of extremely interesting work remains to be done; for instance, an extensive monograph on the various policies pursued toward Germany between 1921 and 1923 would not only be feasible, but also highly revealing. Yet, as soon as we go beyond 1930, even the scanty sources we have for the previous period dry up, as a comparison between the books of Conrad Brandt and Alan Whiting, on the one hand, and Charles McLane, on the other, will clearly show.

Nonetheless, we ought to become or remain sensitive to the conflicts over foreign policy that may be raging within the Soviet leadership. We should be equally sharply on the lookout for the contradictory nature of actual policies being pursued at any given time. In order to heighten his sensitivity to such conflicts and contradictions, the scholar must try to formulate for himself the various alternatives open to the Kremlin and must further try to take into consideration the political ramifications of controversies that might ensue within the Kremlin. Whether this means that we should indulge in "Kremlin astrology" or whether an attempt should be made to apply more sophisticated group theories to Soviet domestic politics is a problem clearly transcending this paper. One thing that can only encourage us in our aim to look at policy debates is the fact that today the Soviet leaders seem to be airing some of their discussions a little more openly than in the last three decades.

5. The World Situation.

It may seem trite to point out that policy is never made in a vacuum, but that it is, instead, a response to environmental conditions. The environment of foreign policy, however, is the world.

Herbert Marcuse has asserted that the nature of the Soviet regime (and this would, of course, include its foreign policies) can be understood only as a function of coexistence: Russia and the West, accordingly, determine each other's nature and actions. Without doubt this relationship of reciprocal determination must be stressed, if only because many of us tend to overlook it. Yet I do think that Marcuse may have overstated a good point. If he means to imply that the cold

war is the most important phenomenon of our age, I should disagree. In my opinion a far more important development is the revolt and emancipation of Asia, Africa, and Latin America; and if we want to gain a more adequate understanding of Soviet foreign policy, we must see it within the context of that revolutionary process.

From the very start we must realize that this revolution cannot be explained as the result of a Soviet conspiracy. On the contracy, it would go on even if the USSR did not exist and were not aiding it. Indeed, a study of the history of the Communist International might even lead us to conclude that this revolution would have proceeded more quickly and successfully, had the USSR not existed. But that remains speculation.

The revolution of our time, then, has not been the creation of the Kremlin. But today more than ever the Kremlin takes an active part in it and derives major benefit from this participation. Three factors help Moscow in gaining these successes. One of them is Russia's increasing ability to let other nations partake of its newly created industrial wealth and scientific achievements. A second one is the fact that the Russian revolution serves as a more meaningful model of development for many political leaders in underdeveloped areas than does the experience of the West. Finally, it seems to me that Soviet ideology, with all its crying inadequacies, has been more meaningful to these same political leaders, and therefore more attractive, than our own feeble attempts to explain problems of, and reactions to, underdevelopment. No adequate understanding of Soviet foreign policy is possible, I believe, without keeping these facts in mind.

My purpose in surveying the various interpretations of Soviet foreign policy has been to suggest that the only problems of research in this area that should concern us are the intellectual problems. Beyond this, I have tried to sketch the main outlines of a frame of reference for studying Soviet foreign policy. This framework must be refined a great deal before it can be very useful, and the outline itself will surely be challenged. I do hope that, at the least, I may have stimulated further discussion of these problems.

Michigan State University
August, 1959

Alfred G. Meyer

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"THE PARTY AND THE REPRESENTATIVE PROCESS: A PROGRESS REPORT ON RESEARCH"

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THE RESEARCH SETTING

In November 1958 the Survey Research Center at the University of Michigan began the collection of data for the fifth of its series of studies of American political behavior.[1] The final stage of field work was completed in March, 1959. In the ensuing months the data were prepared for analysis, and this report is the second review of initial results derived from the study.[2]

The research of the preceding decade took the study of citizen participation in the electoral process as its primary objective. Through interviews with samples of the national electorate, the work of the Center has described the choices made in presidential and congressional elections, and then has attempted to trace the major political, social, economic and personal antecedents of the voters' decisions. (A major discussion of this effort will appear in the spring of 1960 as a volume tentatively titled The American Voter by Angus Campbell, Philip Converse, Warren Miller and Donald Stokes, New York: Wiley & Sons (in press). The 1958 study continues to elaborate many of these interests. In addition, a new and quite different set of goals was given a prominent place in the 1958 design. Major effort was devoted to the exploration of another aspect of the political system--the process of representation. This report is a first statement of findings relevant to this topic.

The study of representation is, of course, a natural sequel to the study of the election. In most statements of democratic theory, the two functions -- election and representation -- are intimately connected. The goal of the election

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[1] The study consists of two independent projects. The larger of these was made possible by a grant from the Rockefeller Foundation to the Survey Research Center, The University of Michigan. The second study was financed by a grant from the Social Science Research Council Committee on Political Behavior to the author of this paper. The report is a product of analysis resulting from the combination of the two projects.

[2] "Constituent and Representative: Parties to a Decision," Donald E. Stokes, paper read at Midwest Political Science Association meetings, May 2, 1959.

"Influence Relations in the Political System," Donald E. Stokes, paper, read at the Annual Meeting of the American Association for Public Opinion Research, May 16, 1959.

is action by the government in accordance with the demands of the electorate. Although we are all aware of persuasive demurrals, a substantial body of political theory -- both normative and analytic -- presumes that such representation of the citizens' preferences is a most important task of government. Furthermore, as we all know, the analysis and interpretation of the intent of the voters is a popular and not necessarily cynical game, widely played in the cold winter evenings following November election day. Finally, unless a tremendous expenditure of time and energy by our political leaders is nothing more than an enthusiastic sham, most of the actors in our political dramas behave as if there were a very real linkage connecting what the voters want, what the politicians do, and what the voters do to the politicians as a consequence.

In our previous work at the Center we have assumed that the election is an institution of great importance. Our efforts have been sustained in part by the thought that a better understanding of the electoral process is necessary to and will lead to a better understanding of the operation and product of American government. One of the objectives of the 1958 study calls for a partial testing of this assumption. We will, in the course of our investigation, search for evidence that success at the polls is a function of the prior level of agreement between the incumbents and their constituents on matters of public policy. We also will seek out indications that subsequent behaviors of Members of Congress are responsive to the electoral verdicts rendered at election time. However, a preoccupation with the antecedents and implications of electoral behavior is not the sole nor even the principal motivation of this study. In general, the study is devoted to a specification and analysis of the conditions which maximize and minimize policy agreement between congressmen and their constituents. The guiding question is: What aspects of American politics facilitate agreement between the representative and the represented and what aspects inhibit such agreement? The electoral process may well contain such maximizing and minimizing elements, but other attributes of American politics are also pertinent to the inquiry. One set, the attributes of the political party, will be described in this paper. We will examine several attributes of party for their contribution to the facilitation or inhibition of policy agreement.

The total portfolio of our research interests includes a good deal more than concern with the role of the political party. In the near future we will give systematic attention to such varied phenomena as the following: the preferred role for congressmen, as it is defined by the congressmen themselves and, separately, as it is stated by their constituents; the impact of extra-party influences on roll-call voting as they are perceived by the congressmen, including interest group representations, the actions of legislative committees in the House and the leadership of the President; the extent of political competition in the home district, as perceived by the congressmen and as indicated by election returns; and the career perspectives of the congressmen. We shall also attend to characteristics of the constituents, emphasizing such items as their level of information, extent of political participation, attention to the campaign and the importance which they attach to questions of governmental policy. Selected aggregative characteristics of the congressional districts will also be examined, including such standard elements as rural-urban

differences and some less frequently used characteristics such as changes in social composition of the district and the economic base of employment for the labor force. A very few of these elements of the American political system will be referred to in later portions of this paper. A full report of their independent and interrelated contributions to policy agreement must await the completion of our analysis.

THE RESEARCH METHOD

Inasmuch as this paper is being presented as a research report rather than as a commentary on research, it is appropriate to offer the method of the study for review and criticism. It is perhaps unusually appropriate in the immediate instance because of some novel features of the method used. If their application to the problem at hand produces contributions to our knowledge of American politics, their wider usefulness will doubtless be exploited.

Sample Design

To those of us at the Center, the most unusual element of the study design involves the direct matching of individual congressmen's attitudes and behaviors with comparable or relevant characteristics of their own constituents. In essence, a single sample design provides the identification of both a sample of the electorate and a sample of congressmen. Each member of the sample of the electorate is located in his own congressional district and thereby identified as the constituent of his own congressman.

In the basic sample design, each member is selected from a sample county which, in turn, has been selected to represent several counties. The individual members of the sample are thus representing not only the populations of the counties in which they live, but the populations of all counties which their own counties have been selected to represent. This, in conjunction with the limited number of sample cases in each county and the extreme "clustering" in the location of these cases, makes it impossible to use a single county sample to estimate the characteristics of the county itself. On the other hand, using a non-sample criterion to differentiate counties, we can estimate the characteristics of populations of categories of counties. We need only have categories embracing wide geographic distributions within them and containing sufficiently large numbers of sample cases. In like manner, our present application of the basic Survey Research Center sample design does not allow us to generalize about the constituents of any single district; it does allow us to generalize about the constituents of categories of congressmen. That is, we can talk about the constituents of Southern Democrats or Northern Republicans or other similar groupings of congressmen. As long as a category of congressmen is not restricted to a geographic unit smaller than one of the four major regions, and as long as the number of their constituents in our sample is not too small, we can give reliable estimates of the characteristics of all constituents of all such congressmen.

Field Work

Knowing this much about the sample design of the study, you can deduce our interest in obtaining information from congressmen as well as from their constituents. In fact, interviews were taken with a probability sample of the members of the House of Representatives in the 85th Congress, as well as with a cross section of their constituents.

Interviewing members of political elites is, of course, a well-tested mode of collecting information about politics and government. However, this is one of the few times systematic interviews have been taken with a carefully designed sample of the House of Representatives.[3] In point of fact, interviews were taken with all leading congressional candidates -- both incumbents and challengers, winners and losers -- in our sample of congressional districts. For other purposes of the study, the comparative analysis of winning and losing candidates should prove to be of considerable interest.

By extending the interview period over some three or four months it was possible to complete interviews with 90 percent of the selected sample of congressmen. I should note in passing that an innovation crucial to the success of the study involved creating an ad hoc field staff for work here in Washington. With the support and good offices of Evron Kirkpatrick, Executive Director of our Association, a number of the congressional interns were trained in interviewing techniques and did yeoman service for us on the Hill. Despite a few predictions to the contrary, the interns along with the regular members of our field staff received a generous reception from almost all of the congressmen. The interviews ranged in length from a very few half-hour sessions to a thankfully equally few three and four hour conversations. In general, the limitations of our budget were more severe than limitations imposed by the availability of members of Congress.

Use of Non-interview Data

The materials provided by the two sets of interviews have been supplemented by two additional bodies of data. From census returns and compilations of election statistics we have amassed data pertaining to many social, economic and political characteristics of the congressional districts. From the Congressional Quarterly we have compiled records of roll call votes cast by members of the House. Following methodological advances already exploited in some of our other work, these non-survey data will be merged with interview data in much of our analysis. This report will illustrate the general technique by describing our use of roll call information.

The Measure of Representativeness

Any scholar who presumes to talk about representation selects a topic replete with confusions of meanings and a profusion of value-laden connotations. Rather than lower my visor and prepare to joust with all who would challenge our right to sully the fair meaning of the phrase, I would rather specify the operational definition which will be used. An understanding of what we take to be evidence of representation may not forestall violent objection, but it will at least provide a common point of departure for discussion. Basic

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[3]The only other instance of a comparable data collection was carried out by J. Eberhart, "Determinants of Legislative Behavior in the U.S. House of Representatives," Psychol. Bull., 39, 1942, 595.

to our definition of the particular facet of representation which is our concern is the concept of agreement on matters of governmental policy. We don't insist that representation cannot have many other meanings as well -- we do think this is one important meaning.

At a conversational level, the concept of policy agreement is well understood. If most of the citizens in each of two constituencies favor a series of propositions, and if the congressman from one votes "aye" on all propositions while the other congressman votes against all of them -- we would conclude the former congressman represented his constituents' views while the latter did not. Or, take a less extreme situation. Assume a series of legislative propositions on which the mean attitudes of a single constituency vary, let us say, from strong support for a relatively liberal position contained in one proposition to equally strong opposition to a relatively conservative position espoused by another. Seventy percent of the constituents may favor governmental guarantees of full employment, with only thirty percent in favor of outlawing the union shop. Instead of demanding that the congressman, to be representative, be just as much in favor of each proposition as is his constituency, we might ask only that the variation in his sentiments toward the propositions be congruent with the variations of sentiment in the district. In our example, if he gives strong support to full employment legislation we might expect him to hold less favorable attitudes toward the proposed labor policy. In absolute terms he might be "ahead of" his constituents on each matter, or consistently "behind" them, but we would take parallel variations, congruent with those in the district, as evidence of a modicum of agreement concerning the relative merits of the proposals. We will also call this minimal demonstration of agreement representative behavior. We will characterize it as direct legislative representation.

Unfortunately, the halls of Congress do not always constitute the best experimental laboratory for the practicing political scientist. Seldom is such a neat variety of situations as either of those described above available for observation. In point of fact, we have no satisfactory techniques for the measurement of absolute level of agreement. We can determine whether a constituency is relatively more favorable toward one policy than toward another. We can also determine whether a congressman supports one policy more than another. We cannot be at all precise in attempting to determine that a given degree of support by the congressman is a better or worse match with constituent sentiments than some other degree of support would be. And, if we cannot measure absolute levels of agreement, neither can we directly assess congruence of variability in attitudes. We cannot, barring great expense, derive an extended series of measurements of variations in the sentiments of a single constituency and of its representative. However, we can create what we take to be the conceptual equivalent of the latter.

Let us identify a group of congressmen who share one or more attributes but who differ with respect to their positions on a given matter of policy. We can then look to their respective constituents for indications of congruent differences in the respective policy positions of their constituencies. If we find constituents of liberal congressmen, for example, to be more often liberal than are the constituents of conservative congressmen, we will have found congruence of variations in their policy positions. Such congruence

of variability will be interpreted as a demonstration of a linkage between the policy demands of the constituencies and the policy commitments of their representatives.

Our goal, again, is the identification and analysis of those attributes or conditions which maximize such agreement on policy. Given the limitations within which we must work, we can look only for factors common to a number of constituencies or congressmen. We can ask, for example, whether the presence of a strong and vigorous party organization in the district is such a factor. If it is, the following state of affairs might be noted: congressmen who report strong organizations in their districts could be separated from congressmen who tell us they come from poorly organized districts. Within each group of congressmen, members could be distinguished, one from the other, on the basis of their sentiments toward a policy question. Thus variability in policy position could be established <u>within</u> each homogeneous category of congressmen -- where homogeneity is defined in terms of the perceived strength of their district organizations. The constituents of each congressman would then be arrayed in accord with their sentiments on the same policy question. If strong local party organizations facilitate direct legislative representation on this policy matter, we would observe the following to be true: The variability of policy position among "strong party" congressmen would be associated with similar or congruent variations in the policy positions of their constituents. Given variability in the policy sentiments of both congressmen and constituencies, there would be a positive correlation between these variations. On the other hand, comparable variability in the policy stands of "weak organization" congressmen would <u>not</u> be associated with comparable variability in the sentiments of their constituents. There might merely be a smaller positive correlation, there might be no correlation at all, or there might be an actual negative correlation. In the case of the strong organization congressmen, we may have observed more liberal constituents in the constituencies with liberal congressmen, and more conservatives or <u>fewer</u> liberals among the constituents of conservative congressmen. In the contrasting situation, constituents of liberal congressmen may be no more and no less liberal than the constituents of conservative members of Congress, or they may even be more conservative in extreme situations. We would conclude that in the absence of a strong party organization in the district, there is less policy agreement, less direct legislative representation, than there is in districts <u>with</u> such organizations.

The comparison of associations or correlations of policy positions is the heart of our proposed analysis technique. At some later point in the analysis we may well attempt to maximize our information by placing different interpretations on positive and negative correlations. In this report, however, I shall treat only with the direction and magnitude of arithmetic differences between correlations derived from contrasting situations. The following example, using actual data, will illustrate the basis for our substantive comments:

	Situation A			Situation A'		
	Congressman's Policy Position			Congressman's Policy Position		
Constituents' Policy Position	Conservative	Moderate	Liberal	Conservative	Moderate	Liberal
Conservative	9%*	2%	6%	23%	39%	28%
Moderate	40	21	10	23	11	19
Liberal	51	77	84	54	50	53
	100%	100%	100%	100%	100%	100%
Number of Cases	(35)	(43)	(61)	(128)	(28)	(32)
Correlation		Tb = .234			Tb = -.044	
Difference in Correlations			+ .278			

*The data are presented in terms of proportionate distributions of the policy positions of each category of constituents to facilitate the reader's interpretation of the correlations. In actual practice we do not compute the percentages but derive Kendall's Tau Beta measure of rank order correlation directly from the raw data.

In situation A, variations in congressmen's policy positions are positively correlated with variations in the policy positions of their constituents. Specifically, the constituencies of liberal congressmen, when compared to those of conservative congressmen, are seen to contain more liberal constituents and fewer moderate constituents. Generally, the association between policy positions of congressman and constituents is reflected by a positive correlation of .234. In situation A' a very different relationship obtains. The general measure of association produces a negative Tau Beta correlation of -.044. For our purposes, the single important datum is the difference between the situations, reflected by an arithmetic difference of .287 between correlations, in which Situation A presents a greater positive association than does A'. If the correlation under the conditions of A' had been, say, +.044, our single measure of difference would become .190; it would have precisely the same qualitative meaning, but it would merely reflect a less substantial magnitude of difference between the two situations.

The Choice and Measurement of Policy Positions

Three policy areas will receive major attention in the completed study of direct legislative representation -- foreign policy, domestic social welfare issues and civil rights legislation. This report, however, is concerned only with the second, governmental social welfare action through legislation. Less as a function of the research methods appropriate to sample surveys, and more as a reflection of our image of the American electorate, we will not give primary emphasis to highly specific issues nor to the groups which are most often thought of in the context of representation before Congress. This does not constitute an appraisal of the importance of interest group activity in government. But, given our sense of the heterogeneity of attitudes and opinions which rank-and-file

members of the larger of these groups exhibit in our national studies, it seemed strategically wise to base this first study in the broader context of the total electorate.

In previous studies of the electorate we have ascertained that most citizens treat a fairly extended range of domestic policy questions as though they were, in important respects, no more than variations on a single theme. Insofar as Guttman scaling procedures reflect the presence of a single or unitary dimension in a set of items, such a dimension has permeated citizens' opinions on public power, federal aid to education, full employment, governmental assistance in medical care and that part of the racial question involving FEPC and Negro housing. In 1956 and again in 1958, sample survey responses to questions on each of these matters could be combined to form a single scale of attitudes for the entire national sample. The dimension of commonality appears to pertain to the desired extent of governmental activity in the field of social welfare. We have reported elsewhere on the antecedents, correlates and political implications of this measured attitudinal syndrome.[4] For our present purposes we may note these policies were originally selected for investigation in 1956 on the basis of anticipated continuing partisan controversy over them in national presidential politics. Their shared attributes as specific components of a more general disposition among members of the electorate was an added bonus. Our cup came close to running over when it became apparent that we could do no better than use the same items in the study of representation.

With a technically validated scale of attitudes toward governmental policy in hand, we proceeded to use the components of the scale to guide our search for comparable measures of the attitudes and behaviors of congressmen. Two independent measures or some combination of them will be used in our final analysis. One measure will be derived from the attitudinal material collected in the interviews. Questions that were substantially identical to those asked the cross section of constituents were also asked the congressmen. A second measure, perhaps the one used in the preparation of this report, will be based on the roll call votes cast on relevant legislative proposals.

In preparation of the behavioral measure, roll calls were selected with the use of three criteria. The first criterion rejected all unanimous votes and those on which fewer than ten congressmen voted in the minority. The second criterion rejected all votes that did not have at least an apparent content relationship to the social welfare area. This involved assessing each roll call, using all available information -- including the wisdom and experience of our panel chairman -- and making a judgment as to the relevance of each vote. The policy areas reflected in the interview questions provided the major guide to these decisions, but a few other topics are also represented in the final selection. The third criterion resulted in setting aside all votes on which the Republican-Democratic party differences in support of a motion exceeded 49 percentage points. That is, a vote which found 70 percent of the Democrats and only 20 percent of the Republicans in agreement was rejected.

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[4] See The American Voter, especially Chapters 8-10.

The resulting minimization of interparty differences was sought in order to facilitate Guttman scale analysis of the roll calls. For many of our analysis plans it is essential that Republican and Democratic congressmen be described in comparable terms -- just as the attitudinal scales permit. Consequently, it was desirable to avoid developing separate scales of roll call behavior for Democrats and for Republicans, and this led to an a priori rejection of items which could be included only by a more or less serious violation of this requisite for analysis.

The three criteria produced a pool of 13 roll call votes on social welfare legislation in the House of Representatives in the 85th Congress. From these a number of alternative measures of policy positions have been created. For this report I have selected the most general measure -- a simple inventory of scores based on the thirteen votes. An extended analysis must be completed before we will be in a position to evaluate the relative merits of this inventory and those of each of the half dozen "scales" which have been discovered. A central and independently worthwhile focus of such analysis will be on the interrelationship of policy positions reflected in attitudinal statements and those derived from roll call behaviors. Such investigation should provide badly needed information about the strengths and weaknesses of political analysis which must rest on roll call analyses alone. We may come to know more about which of the presumed pitfalls of roll call analysis are merely logical possibilities, and which do, in fact, appear likely to confound and frustrate meaningful interpretation.

The distributions of the inventory of policy positions are of considerable interest in and of themselves. Table 1 presents the social welfare roll call inventory for three major categories of congressmen. The distinction

Table 1

		North		South		Total		
		Rep.	Dem.	Rep.	Dem.	Rep.	Dem.	Total
				*				
Conservative	1	13%	0%	--	7%	14%	4%	8%
	2	13	1	--	11	13	6	10
	3	21	0	--	14	20	7	13
	4	9	1	--	8	9	5	7
	5	14	1	--	16	15	8	11
	6	9	0	--	12	9	6	7
	7	10	13	--	17	10	15	13
	8	7	27	--	6	6	16	11
Liberal	9	4	57	--	9	4	33	20
		100%	100%	--	100%	100%	100%	100%
Number of Cases		(180)	(112)	(15)	(116)			

*Too few cases to provide reliable estimate.

between conservative and liberal is simply defined as opposition to or support for governmental social welfare activity. The scores of 1-9 are arrived at by collapsing a 27-point scale which resulted from giving each congressman a score of two for a supporting position on a vote, a score of zero for opposition and a score of one for an absence, general pair or otherwise unannounced position. Raw scores of 0, 1 and 2 were then combined; 3, 4 and 5; 6, 7 and 8, etc. In practice we shall further collapse the nine-point scale to a three-point scale -- except for the Northern Democrats. The behavior of Northern Democrats on these roll calls imposes a considerable methodological handicap on the analysis. The general model with which we are working calls for comparisons of correlations. Comparability rests in part on equal opportunity for variability in the two elements of the correlation table across all tables to be compared. In the case of the Northern Democrats, however, the variability of their policy positions is highly attenuated when compared to that of the other categories of congressmen. If we collapsed all scores from 1-9 into thirds, 1-3, 4-6 and 7-9, we would still have sufficient variability among Republicans and Southern Democrats, but we would have compressed all Northern Democrats into a single, undifferentiated policy position. To avoid this we will proceed with the analysis distinguishing between inventory scores of 7, 8 and 9 for Northern Democrats only. This means, of course, that "conservative" Northern Democrats are in fact more liberal than moderates in the other two categories. The policy distance between conservatives and liberals in the Northern Democratic group will be much less than that between other conservatives and liberals. Thus, although we are able to preserve some variability among Northern Democrats, it remains considerably attentuated when compared with the variability of others, and to that extent our likelihood of establishing differences in policy positions of their constituents is jeopardized. Moreover, comparisons of differences in policy agreement among the three major groupings may no longer be a simple and strict comparison of differences in correlations, but under some circumstances may have to accommodate the limiting effect of the troublesome attenuation.

Aggregate distributions of constituents' policy positions show an interesting match with the variations noted among the congressmen. Moving immediately to the three point scale of our analysis, Table 2 presents the distributions for three groups of constituents. The intergroup variations

Table 2

Congressman is - - -	North		South	Total		
	Rep.	Dem.	Dem.	Rep.	Dem.	Nation
Constituent is:						
Conservative	20%	11%	21%	20%	16%	18%
Moderate	30	23	16	30	20	25
Liberal	50	66	63	50	64	57
	100%	100%	100%	100%	100%	100%
Number of Cases	(558)	(326)	(358)			(1279)

are, of course, subdued versions of the roll call distributions. Nevertheless, the apparent matching is sufficient to produce the following national description of the interrelationship of our two major variables. At this gross level,

Table 3

Policy Position of Congressmen in Relation to the Policy Positions of their Constituents

Constituents' Policy Position	Congressman's Policy Position		
	Cons.	Mod.	Lib.
Conservative	23%	16%	14%
Moderate	26	27	23
Liberal	51	57	63
	100%	100%	100%
Number of Cases	(469)	(188)	(622)

the correlation reflecting degree of policy agreement is .110.[5/] Subdivision of the total into the three sets examined in Tables 1 and 2 discloses that most of the association at this level of analysis is contributed by Northern Republican congressmen and their constituents. For them the level of policy agreement stands at .117; in Northern Democratic constituencies it is only .019 (and considering sampling error this is not a statistically significant departure from .000); in Southern Democratic districts the correlation is only .033 (also not reliably different from zero).

THE PARTY AND THE REPRESENTATIVE PROCESS

It is no less difficult to speak precisely about "the party" than it is to speak unequivocally about representation. And as we turn to consider party as it is tentatively treated in this report, our descriptions may seen somewhat

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[5] Depending upon prior expectations, the level of policy argreement reflected here may strike one as moderate or even as exceedingly low. In the latter event, one should keep in mind that we are using a representative-constituent definition of policy agreement, not a definition based on representative-constituency relationships. A sensitive, responsive congressman might reflect the dominant sentiment of his constituency and yet oppose the wishes of 49 percent of his constituents. Given a number of such situations, each of several congressmen might be perfectly attuned to their district's wishes -- creating complete agreement between them and their districts -- and yet our measure of their agreement will depend on the number of their constituents who are in the minority and on the extremity of policy positions held both by majority and minority constituents.

removed from the full bodied essence of reality described in much of the literature dealing with political parties. To some extent, this will be a necessary reaction to the preliminary nature of the analysis reported here. Some of the data which will eventually be used in analysis are simply not included in this introductory view. To some additional extent, the problem is the ubiquitous problem of developing operational measures for research which do justice to the conceptualizations which are the subject of the research. Just as power becomes powerfully hard to define for research purposes, so also many of the attributes of party defy ready and simple translation.

Finally, the measures of party attributes which we shall consider are uniformly derived from a unique source, and consequently are not completely unambiguous in their meaning. They are all derived from our interviews with the congressmen. They are, in short, the congressmen's perceptions of the characteristics in which we were interested. The first of these, for example, is the previously mentioned attribute of organizational strength. We wanted to know whether the existence of a strong party organization in the district was relevant to the process of direct legislative representation of policy demands. We did not ask the congressman whether it was, but we did ask how strong his party's organization was in his district. What we now have is his assessment. Is it a reliable evaluation, or nothing more than his purposeful perception, or nothing more than what he thought proper to tell our interviewer? Excluding the last possibility, one might argue that as long as we are interested in his behavior, <u>his</u> view of his political world is as important, if not more important, than a strictly objective description might be. This may sometimes be the case, but we asked the question to find out how strong the organization -- not how strong the congressman's will to believe. In any event, I shall treat this and other descriptions of party and party attributes as though they are reasonably accurate descriptions. I invite your attention to these other possibilities because, at least in the general statement of them, they suggest fundamentally important questions of method and substantive interpretations.

I have selected for discussion nine attributes of the congressman's party. They may be subsumed under four rather broad headings: (1) organization in the district; (2) the congressman's relationships with the formal party organization; (3) electoral support from party followers in the district; and (4) the congressman's relationships with non-district elements of the party. In most instances, all nine attributes will be treated as a single set of indicators pertaining to the importance of party in the affairs of the congressman. However, before introducing the attributes in an analysis of representation, it is instructive to look at their incidence in the three groups of constituencies we have examined before. Table 4 presents a brief summary of these data.

The justification for persisting in the separate but equal treatment of the three categories of districts will become strikingly apparent in a moment. It would be less than fair, however, to leave the impression that we were fully prepared to discover marked differences between the two parties in the North, or that we had a clear idea of the differences that actually do distinguish North from South among the Democrats. The original rationale for maintaining the partisan and regional distinctions was largely that of wanting to avoid blurred findings -- stemming from distributional peculiarities -- and, at the same time, guarding against artificial findings -- such as might

Table 4

Incidence of Party Attributes by Regional Location and Party Control of the District in the 85th Congress*

Proportion of Congressmen Reporting:	Northern Districts Republican	Northern Districts Democratic	South Democratic
1. Strong party organization in district	28%**	64%	41%
2. Organization controls nomination	55%	50%	17%
3. Organization influences election	41%	46%	--***
4. Policy position important in renomination	28%	45%	64%
5. Party supported his first candidacy for the district seat	34%	63%	31%
6. Party is an important source of information about constituents' policy positions	36%	45%	30%
7. Party loyalty was an important factor in the 1958 election	61%	53%	69%
8. He feels it important to vote with other members of his party's state delegation	39%	55%	55%
9. He feels it important to vote the way his party leadership wants	28%	44%	36%

*See appendix for wording of questions and classification of responses.
**Entry is proportion of all congressmen in category.
***Too few contests to provide reliable estimates.

result from a concentration of Republican districts on one end of our congressional policy distribution with Northern Democratic districts at the other. The motivation for separating groups of constituencies was thus in part that of attempting to conduct our investigation under the most rigorously controlled conditions; we were prepared to say that whatever findings were disclosed occurred "across-the-board" and held true for both parties and within both regions.

At the descriptive level, being concerned for the moment with the distributions of the party attributes in the three party settings, some of the variations -- particularly regional variations -- are those that could be expected. Others, however, were not anticipated and suggest the need for substantial reexamination of some of our folklore of American politics. Many of the particular items are worthy of comment, but attention should be drawn to two general trends as well. On four of the nine items, Republican congressmen are less likely than Democrats to rate their district organization as strong, to emphasize the role of issues, or to attach importance to their own relationships with nondistrict party elements. On the other hand, Northern Democratic districts are, in general, described in terms that suggest party in its many manifestations plays an important role in the affairs of the congressman.

The net result of these two situations is to suggest a considerably more pervasive and more active role for party in the process of policy formulation by Northern Democrats and, conversely, to indicate that the Republican congressman much more often casts his vote without advice or interference from party.

One may wonder to what extent these characteristics are a reflection of basic structural and functional differences between the two northern parties, and to what extent they are more properly attributed to national political fortunes and events of the Eisenhower era and before. On the national level, long experience as minority members may have left many Republicans bereft of obligation to or affection for the national party. It will be interesting to discover, for example, whether those members who do honor party leadership are of the generation of Eisenhower Republicans or old line stalwarts. On the local scene, the absence of strong organization may be a consequence of ad hoc organizational strength spent on presidential politics with few resources left to be devoted to the local candidates.

Turning to the Southern districts, all three distinctive features seem to accord generally with other information about these aspects of Southern politics. The heavy weight attributed party loyalty and the infrequent intervention of the organization in the nominating process are familiar notes. Anticipating somewhat our next set of data, we may suggest that the prominence accorded issues is, in fact, prominence accorded the race question. Our analysis has not yet verified this supposition, but we shall note shortly that the issues in question are probably not social welfare issues.

As a last specific commentary, we may note with some surprise the frequent attributions of importance to the state delegation and the party's leadership in the House. Despite, or perhaps because of, our chairman's analyses of the cohesion of state delegations, we were prepared for a much more general denial of importance to the attribute of party. As for the importance assigned to agreement with party leadership, our expectation was not that it was unimportant, but rather that the mores of American politics would dictate denial of its importance.

Finally, the variability in incidence of these attributes of party demands comment. Even limited familiarity with politics at the district level conveys an impression of great variation from one locale to another. Nevertheless, there has been little to suggest that this variation carries over into such patterns of major regional and inter-party differences. If the data of Table 4 are at all indicative, the concepts and connotations of party politics can have universal meanings within the context of American politics only in an analytic sense if at all. On a descriptive level they vary widely enough to force us to ask anew in each district for evidence that any particular attribute does, in fact, exist. Further study of the interrelationships of those attributes we have now measured may, of course, dispel some of the sense of almost chaotic variation within a regional party -- as in the case of the Northern Republican districts. In the meantime it seems prudent to underscore comments on the heterogeneity of national congressional politics.

PARTY ATTRIBUTES AND POLICY AGREEMENT

Although the variations inthe incidence of party attributes are of considerable interest, we are ultimately concerned with ascertaining the role which each attribute plays in the facilitation or inhibition of policy agreement. Where a given attribute is present -- whether ubiquitously or only occasionally -- we are interested in its contribution to policy agreement between representative and represented.

There are a number of ways in which the data describing these contributions might be presented. The mode we have selected combines a specific figure, derived from the relevant correlations and described earlier in this paper, with a schematic representation of both the qualitative and quantitative meaning of the figure. These two summarizations of the correlational analysis are presented in Table 5.

Table 5

The Relation between Presence or Absence of Party Attributes and Differences in Association between Constituent and Congressman's Policy Positions, by Region and Party of Congressman

Congressman Reports:	Northern Districts		South
	Republican	Democratic	Democratic
1. Strong party organization in district	0 (.000)	++ (.171)	-- (.165)
2. Organization controls nomination	- (.055)	++ (.411)	0 (.000)
3. Organization influences election	- (.049)	++ (.279)	*
4. Policy position important in renomination	+ (.048)	++ (.319)	-- (.268)
5. Party supported his first candidacy for the district seat	++ (.292)	++ (.522)	- (.055)
6. Party is an important source of information about constituents' policy positions	- (.070)	++ (.182)	-- (.280)
7. Party loyalty was an important factor in the 1958 election	-- (.155)	++ (.207)	- (.030)
8. He feels it important to vote with other members of his party's state delegation	-- (.180)	++ (.216)	- (.054)
9. He feels it important to vote the way his party leadership wants	0 (.000)	++ (.239)	++ (.293)

*Too few contests to provide reliable estimates.

NOTE: A double sign indicates differences that are probably statistically significant; a single sign indicates the probable direction of a difference if it is in fact a real difference.

The figure in parentheses is the arithmetic difference between correlations in the two sets of constituencies being compared. The zero sign indicates that discriminating between constituencies on the basis of the attribute does not produce any difference in the level of policy agreement within the resulting sets of constituencies. Whatever that level may be, it is equally high or low whether the attribute of party is present or absent. A plus (+) sign indicates that the presence of the party attribute is associated with a higher or more positive correlation of policy positions. In the first row, the "plus" indicates greater policy agreement between constituents and congressman in those Northern Democratic districts with strong organizations. By a correlation difference of .171, agreement is higher there than in Northern Democratic districts where the organization, if it exists at all, is weak. The most obvious hypothesis is that in the Democratic party of the North, strong party organization in the congressional district facilitates policy agreement between representative and represented. Relative to the presence of strong organizations, the absence of organization may be an inhibiting condition. As we indicated earlier, this need not necessarily be taken to mean that the absence of organization is absolutely dysfunctional for policy linkage. However, if increased agreement is the goal it might be achieved by strengthening the organization; it might be thwarted by weakening the organization. Finally, the minus (-) sign tells us that policy agreement is higher in the absence of the attribute of party. Again in the top row of Table 5: in the Democratic party of the South there is more agreement between constituents and representatives in districts with weak organizations or no party organization at all; there is relatively less congruence in the strong organization districts.

Throughout Table 5 the general pattern within each of the three categories of congressional districts is remarkably clear, and the differences among the three patterns is strikingly obvious. By and large, the presence of party in the affairs of the Republican congressmen of the North does not seem to affect the level of policy agreement which exists between him and his constituents. The same attributes of party, without a single exception, appear to facilitate policy agreement in Northern Democratic districts. Finally, the intervention of party in the Democratic South may be viewed as an inhibiting element, dysfunctional for rapport in policy matters between the Southern constituents and their congressmen. Unless subsequent analysis suggests radically different interpretations of these data, it would seem that they constitute a remarkable demonstration of differences in the operation of these three party systems. More properly, the need for and the direction of additional analyses have been specified for us by these data. Instead of providing general answers to a series of specific questions, our first view of the data has raised a new set of questions. We must articulate an additional set of hypotheses -- other than those which prompted the original data collection -- to accommodate the new information. It seems clear that their eventual acceptance would constitute a major addition to our knowledge about the nature of the political party.

For example, we hypothesize that as a general phenomenon in the Republican North, the local party is largely irrelevant to that aspect of representation in which we are currently interested. Only three of nine tests show a significant relationship between the presence or absence of a party attribute and a difference in congruence of policy positions. One of these

pertains to the party delegation in Washington; one pertains to the partisanship of the local electorate in the rather narrow and specific context of the 1958 elections; and the third, where the consequence of party action is opposite to that of the other two instances and in which party intervention facilitates representation, may conceivably be a function of historical accident rather than of contemporary selectivity or party recruitment. This seems possible because the congressmen reporting party support in their first candidacy are overwhelmingly concentrated in the conservative wing of the party (76%) or in the moderate center (18%). If the recent additions to the Republican side of the House are the liberals and the moderates of the party who do not report party support of their candidacies, their policy agreement (-.006) would be a better indicator of the current role of Republican recruitment than would that of those who received support in years gone by (+.286). If no such date of introduction to congressional politics separates Republicans who received party support from those who did not, we will then be called upon to explore and reconcile the suggested contradiction between the facilitating role of party recruitment and the inhibiting effects of policy-relevant communications from the party (item six).

Although the interpretation of irrelevance seems initially to be the most likely interpretation, variations in the data pertaining to northern Republican districts again urge an exploration of the interrelationships among our attributes of party. Such inquiry would almost certainly improve our understanding of the present array of data. At an earlier point in this discussion we considered the gross levels of policy agreement for the national sample of constituencies and for each of the three component groups of districts. We made the point that only among Northern Republican districts was there such overall agreement between their policy positions. Whatever future analysis of the Republican data discloses, it now seems clear that this initial display of data was not the result of the policy concerns of local party organizations.

Given the initial absence of gross policy agreement among Northern Democrats and their constituents, it would now appear that the aggregated data masked the very considerable differences which exist between situations marked by the presence and absence of party attributes. Although we still do not intend to deal extensively with the interpretation of negative correlations, it is apparent that the Northern Democratic entries of Table 5 could be generated from an overall absence of policy agreement only by separating instances of strong positive correlations from countervailing instances of strong negative correlations. Consequently we may note that almost all of the correlations on which the differences in Table 5 are based were individually significantly different from zero. It is possible that all but one of the positive correlations developed in the presence of a party attribute are statistically significant, and on the other side there are probably six statistically significant negative correlations developed in the absence of party attributes.[6]

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[6] Part of our earlier concern with the attenuated range of variability among Northern Democratic congressmen is now allayed. Despite their restricted "range of talent," correlations of considerable magnitude do exist. Since it is bootless to wonder whether a different Democratic party of the North would produce an extension of this range and therefore even higher levels of policy

To restate the general case of the Northern Democrats more positively, each and every intervention of party is associated with an increase in the level of agreement on policy. On the basis of these data we must hypothesize that the Democratic party of the North facilitates direct legislative representation.

Two lines of analysis are immediately indicated for the Northern Democratic constituencies. The first might well be devoted to a continued testing of the general hypothesis. This would consist largely of searching for related but prior causal factors which should more properly bear the responsibility for policy agreement. For example, it might be that a number of the congressmen recruited by the party hew to a theory of direct democracy and reject a Burkeian interpretation of their roles as representatives. If they are from districts in which all nine party attributes are present, they may be uniformly creating the impression of party facilitation of agreement through their own personal commitment to the propriety of such agreement. If this be the case, recruitment of non-Burkeian candidates might be the party's only contribution to agreement on policy. This could, of course, still be a deliberate and important consequence of general Democratic party policy and no less a party matter for all its unitary base. On the other hand, maybe all those congressmen actively recruited are randomly divided among themselves on the matter of philosophies of representation. Maybe it is the subsequent availability of the party's intelligence about electoral sentiment in the district which allows a preference for the role of agent or instructed delegate to be fulfilled by the congressman.

Before losing ourselves in the byways of speculative possibility, the trend of these brief suggestions should be noted. If we are unable to find good reason for dismissing our general hypothesis, we may accept it and move to disentangle and assess the contributions of each attribute of party to policy agreement. As yet we have no notion whether the nine positive findings may be cumulated, whether they are redundant or, indeed, anything about their interconnectedness. If, within the limits of available data, we do come to a tentative acceptance of the theory of facilitation by party, our second line of inquiry will be devoted to the explication of the facilitating attributes of party.

The Democratic constituencies of the South appear to present us with the third and last of the logically possible general situations. If we hypothesize <u>irrelevance</u> for the attributes of party in the Republican North, and if we hypothesize <u>facilitation</u> for the general role of party in Northern Democratic districts, we must suggest that party activity in the Democratic South <u>inhibits</u> the development of representative rapport on matters of policy. This may mean only that a generally high level of agreement between congressman and constituent is less high under certain conditions of party activity -- but

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agreement, we need not speculate about the need for a "corrective factor" to allow equating of Northern Democracy with the other regional parties. More equivocal patterns of differences may be expected in other analyses, however, and the interpretation of comparative differences may yet be plagued by the limited opportunity for variability of agreement in the Democratic North.

the implication of relatively inhibitory effects cannot be escaped. It is true that the data are not as sharp and definite as was the case with the Northern Democrats. In the South, three substantial negative findings are accompanied by four findings with the same sign but based on much less substantial differences between groups, and by one null finding and one unmistakably positive result. Nevertheless, the impact of the general pattern of differences is such as to warrant the suggested hypothesis.

Unless one is unreasonably impressed by the symmetry and logical completeness of a trio of findings which include a plus, a zero and a minus, at first blush the minus seems perplexing. Indifference, conflict, ineffectiveness or inaction concerning social welfare legislation can all be used as general categories to suggest explanations for the role of party in the Republican North. Their antonyms, plus other explanations, can be addressed to the Democratic North. But if these extremes of causality account for the difference between null findings and positive findings, what is left to accommodate negative findings?

In short, the meaning of the hypothesis which holds the Southern party to be a negative, restraining influence on policy agreement is somewhat less obvious than meanings assigned the other two hypotheses. There is, however, the possibility that we are viewing the consequence of a political superstructure alienated from its electoral base. It might not be unreasonable to accept this as following from the absence of organized party competition -- a result of the one-party system of the South. The supporting argument runs as follows: In accord with the much more substantial studies of the South by V.O. Key and others, we have again presented evidence of the limited role of the party in the South. A review of Table 4 discloses a number of instances in which the apparent weakness or inactivity of the Northern Republican party is matched or exceeded in the Democratic South. The one important exception to this is the notable extent to which "voting wrong" in Congress could be a handicap in seeking renomination. We have now observed that it is constituencies where the exception holds that produce one of the more substantial situations of reduced congruence on social welfare policies. To repeat an earlier suggestion, the issues which are of such negative consequence can scarcely be social welfare issues but, in accord with the lore, they may well concern the broad topic of race or the restricted issues of agricultural production and marketing.

The presence of a single topic of paramount importance and the absence of challenge and competition from a second party in the district may have combined to create throughout the South party institutions which are literally frozen in their limited concern for the one topic. With the introduction of one additional factor, the stage would then be set for the alienation of the political structure from its base in the citizenry. That factor would be social or economic change taking place in the same areas.

Although we have not yet turned to these data in our analyses, we do have materials which bear on such changes which others before us have noted in the South. In particular, we have data which may allow us to pinpoint regional change in the components of our attitudinal measure of constituent social welfare demands. If there is, indeed, any substantial

indication that these attitudes are changing or have changed within the southern electorate, we may then be prepared to complete our argument. We will seek to test the thesis that changing policy demands of constituents have not been reflected in a party system which has atrophied in its singular concern with the racial or other more limited issues. With such problems to command its attention, and with no viable political alternative threatening its electoral control, it may -- in its limited existence -- have come to be a conservative influence inhibiting response to changing popular demands. Southern Democratic congressmen from districts with strong organizations, who rely on those organizations for information about district sentiment, may be disadvantaged in their ability to respond to the electorate in policy areas other than those concerned with racial issues or the cotton market.

If this general line of argument is confirmed or at least sustained in subsequent analysis, we will have solved our dilemma. At the same time we will have succeeded in a small way in locating the political system of the South in the broader contexts within which all political systems must operate. The argument will have demonstrated that lack of articulation between the political institution and the problems of the electorate is, as it "should" be, a source of discontinuity in a system of representative government.

In the course of generalizing from the data of Table 5 to the broad hypotheses concerning each of the party systems, we relied only infrequently on inter-attribute variations within each system or across systems for insight into the shared meanings of the items. We presumed, and I think properly, that we could speak broadly in terms of the intervention of party in the representative process without raising particular questions about what each form of intervention "really means." Without suggesting an undercutting of any prior interpretation, attention should be directed to the last entry of the table. In our earlier interpretations we were content to say that party leadership -- as an attribute of party -- was not relevant to representation among Northern Republican constituencies but was positively facilitating for both Northern and Southern Democrats.

The fly in this particular pot of honey comes from the original hypothesis which led to the collection of congressmen's evaluations of party leadership. The hypothesis assumed that national leadership could not reflect the variety of local conditions that would produce policy variations hence the opportunity for policy congruence <u>within</u> each party. This presumed, of course, that attention to leadership wishes would derive its primary meaning from adherence to a national party line on matters of policy. The hypothesis held that the importance of national party leadership would be <u>negatively</u> related to policy agreement and representation. The demonstration that it is, in fact, positively related in two of the three settings not only confounds the original hypothesis; it also calls into question the meaning of the data.

Without going into a major development of supporting arguments, it may now be suggested that in addition to, or instead of, the presumed meaning of the information, two separable meanings can be assigned to Northern and Southern Democratic congressmen, respectively. To the men from the North, the question put to them may have meant, in part, "How important is your party

to your voting decisions?" The meaning of the query may have been derived more from a general response to the concept of party and less to the specific concept of following a national party line. Adherence to a national party line is, of course, quite consonant with the Northern Democrats' great homogeneity of position on social welfare legislation, as well as with frequent attribution of importance to the party leadership. However, insofar as the response to the query was a response to party in general, the other data indicate it was a response to a phenomenon which more often than not facilitates policy agreement. In other words, by minimizing the "national" referrent and the implication of complete subservience to a party line, there is room for the additional meaning which must underlie the empirical evidence of facilitation. It should be noted, however, that this interpretation makes the response to the question a derivative matter casting little additional light on the nature of the facilitating functions of party. It should then not be considered a ninth separate attribute of party, further elaborating the facilitating role of party; it should be viewed only as a summary reflection of the particulars through which facilitation is accomplished.

The interpretation of meaning for the Southern Democrat must be almost diametrically opposed. Emphasis on party, if our earlier interpretation is valid, would necessarily be emphasis on an inhibiting factor. Consequently, we may suggest that the Southern Democrat who feels party leadership important in his vote decisions is (1) less than totally preoccupied with the race question and thereby precluded from an evaluation of legislation pertaining to it, or (2) more than peripherally interested in other legislative matters on which a variety of influences are felt to bear. If the assertion of the importance of agreement with party leadership reflects a concern with a broader range of issues, we might predict a negative correlation between attribution of importance to leadership and attributions of strength and influence to the district organization. Such predictions are, of course, testable within our body of data.

Affirmation of this line of speculation would further illuminate the nature of the political system of the South. Where our earlier speculation concerned the articulation of the political institution with its economic and social context, the present brief argument concerns the ties between local and national politics. With the anomaly of this single facilitating element of party as the goal, we shall be prompted to explore there and elsewhere the nature of local-national relationships within all three political systems under investigation.

Turning to a general implication of the data of this report for a concluding comment, I direct your attention to the joint consideration of Tables 4 and 5. An entry-by-entry comparison across tables suggests there is little if any relationship between the incidence of an attribute and its importance in establishing conditions of policy agreement. Although some of our large earlier generalizations still seem warranted -- such as the low incidence of strong and active Republican organizations and the null findings in the Republican column of Table 5 -- one may yet be impressed with the

deviations within these generalizations. The point of this is simple and obvious, but important. Disciplinary emphasis on description may lead to inappropriate attributions of significance. A concern for the function and meaning of the phenomena of politics is perhaps less well served by the proliferation of description and better honored by attention to explanatory theory. Within political science the field of Political Parties, in particular, seems unduly burdened by an ever-growing mass of facts, while the organization of even a few of them into coherent bodies of knowledge taxes our explanatory and theoretical resources. And yet, as this report may have demonstrated, the attempt at organization may disclose a depressing paradox.

Each question answered is replaced by a dozen new questions asked -- and for their resolution we will probably have to collect even more facts. Nevertheless, we will have made substantial progress if the subsequent collection of data can be guided by an amplification of our present pieces of theory. If the new data can be used to build on what we have learned from the old, we may be rewarded by an increase of knowledge rather than a mere increase in the number of established facts.

ON THE PROBLEM OF OPPOSITION PARTIES IN THE NEW COMMONWEALTH

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Prepared for delivery at the 1959 Annual Meeting of The American Political Science Association, Washington, D.C., Mayflower Hotel, September 10-12, 1959

On the Problem of Opposition Parties in the New Commonwealth

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It is becoming increasingly difficult to conduct a general discussion of the politics of the British Commonwealth. The Commonwealth virtually defies generalizations. Its ten sovereign members are: the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan, Ceylon, Malaya and Ghana. The member countries seem to have less and less in common as their number increases. They do not share a common race, creed, language, or citizenship. They are not all subject to the political sovereignty of the British Crown, and they are not all encompassed within the economic sovereignty of the pound sterling. Nor is the common nature of their Commonwealth association at all clear. That association has currently been described, not unfairly, as a myth; its history has been called "one of continuous disintegration;" and its central rationale of unity in diversity has been labelled "an affront to that theory of international relations according to which sovereign states have a prime concern for the maintenance of their own power and therefore an inherent antagonism."[1] Cwthmanship (Commonwealthmanship) has indeed become a very fine art. The caustic suggestion has been justly made that its motto should be "All for One, and Free for All," and that the cwthman needs above all "A pocket manual devoted to the essentials - e.g. just how much he can get away with."[2]

Nevertheless, the Commonwealth association exists, and it seems as natural for Mr. Nkrumah or Mr. Nehru to come to London as it is for Mr. Diefenbaker or Mr. Menzies to do so. One of the most common answers given to the dilemma of defining the remaining unity of the Commonwealth is the observation that its members do all share in the practice of the British political tradition.[3]

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1. Hedley Bull, "What is the Commonwealth?", World Politics, v. XI, no. 4, July 1959, pp. 577, 579, 577-578

2. See the already classic piece "Cwthmas" (the "w" pronounced as in Ebbw Vale) in The Economist, 27 December, 1958, pp. 1133-1136.

3. This is roughly the formula adopted by the British government. For example: "Like the United Kingdom, the Commonwealth has no written constitution, but all its Members have certain salient constitutional features in common. They are parliamentary democracies, their laws being made with the consent of a freely elected parliament after discussion in that parliament, and the executive government holding office because it has the support of a majority in parliament." British Information Services, The Commonwealth Association in Brief, London, July 1958, p. 6.

Even this generality, however, is true only with considerable qualification. Certainly the quintessence of that tradition is the institution of parliamentary government. Yet Pakistan has been governed by a presidential dictatorship since the promulgation of martial law on 7 October, 1958 and the subsequent assumption of office as President of Pakistan by General Mohammad Ayub Khan on 27 October, 1958. And even if the case of Pakistan is dismissed as a temporary aberration, other exceptions remain to be taken. British parliamentary government today is not only inconceivable without parties, but Sir Ivor Jennings asserts specifically that "the British parliamentary system assumes the existence of two parties."[4] Yet not even the semblance of an effective two-party system exists in India, Pakistan, Ceylon, Ghana and Malaya.

To meet this difficulty the practice has become fashionable of dividing the Commonwealth into an "older" and a "new" component. The older Commonwealth, pre-World War II and essentially white, consists of Britain and the four Dominions of Canada, Australia, New Zealand and South Africa. The new Commonwealth consists of the Asian and African nations which have joined the association as sovereign members since the war. With regard to the older Commonwealth the familiar formula of reference to the British political tradition is still deemed applicable. Thus Gwendolen M. Carter states that "rarely have transplanted institutions grown with such vigor and fidelity to the parent-stock as in the older overseas members of the Commonwealth of Nations,[5] and Alexander Brady asserts that "in all the Dominions, as in Britain itself, there is a trend to a two-party alignment."[6]

It may be necessary to make a qualification here as well, with reference to South Africa. In a current book Alan Paton claims that the ruling National Party has legally and constitutionally converted South Africa into a one-party state.[7] However, it can reasonably be argued that the problems of South Africa must be discussed in the context of the older Commonwealth, and that they differ greatly from those of the new.

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4. Parliament, 2nd ed., Cambridge, 1957, p. 22.

5. "The Commonwealth Overseas: Variations on a British Theme," in Sigmund Neumann, ed., Modern Political Parties, Chicago, 1956, p. 58.

6. Democracy in the Dominions, 3rd ed., Toronto, 1958, p. 525.

7. In evidence, Paton cites: "... The rural underloading and the urban overloading, by which a rural constituency need contain only 85% of the number of voters obtained by dividing the total number of voters in the Union by the total number of constituencies; conversely, an urban constituency may be overloaded up to 115% of this average quota. This favours the Nationalist Party because the rural districts are overwhelmingly Afrikaans-speaking and are overwhelmingly Nationalist ... Furthermore, in 1936 General Hertzog removed African voters to a separate roll, and in 1956 Mr. Strijdom removed Coloured voters also, thus concentrating potential support for the Opposition in a limited number of constituencies; and it is not unlikely that the first roll will soon be abolished, and that the second will not be long in following it. Then South-West Africa was granted a wholly disproportionate representation, and returned a grand slam of Nationalists to Parliament. The Senate was fantastically enlarged, and a new method of election introduced, whereby the Government took 77 of the 89 seats, thus giving Mr. Strijdom a manu-

II

As for the politics of the new Commonwealth, these are generally characterized as transitional. The temptation is great to assume that they are in transition toward the British model. On this assumption alone, however, it is difficult to evaluate factual developments. A prime example of difficulty is the status of opposition parties in the new Commonwealth. The existence of the loyal opposition is a hallmark of British parliamentary democracy, one whose significance never fails to impress foreign observers.[8] Yet even the most rudimentary survey discloses that in the sovereign African and Asian members of the Commonwealth there exist neither effective two-party systems nor effective parliamentary oppositions.

In Pakistan, the party system is presently effectively suspended, along with the constitution. It is worth noting that the Muslim League, the dominant political party at the time of independence, had virtually disintegrated by 1956 without even the verdict of the people at a general election.[9] In India, the general election of 1957 gave 365 of the 497 seats in the Lok Sabha to the ruling Congress Party; 27 seats went to the Communists, 19 to Praja Socialist Party, 4 to Jan Sangh, and 73 were scattered among splinter groupings. The Congress Party thus overwhelmingly dominates Indian federal politics, and a competent observer states that "the future of the opposition remains perhaps the single most challenging political question in India today."[10]

In Ceylon, the general election of 1956 allotted a majority of 51 of the 95 elected seats in the House of Representatives to Prime Minister Bandaranaike's Freedom Party coalition (Mahajana Eksath Peramuna). The right-wing United National Party, which had been in the majority before the election, was drastically reduced to a parliamentary complement of 8. The main opposition party is the Trotskyite Lanke Sama Samaja Party, which holds 14 seats. 10 seats at the election went to the Tamil Federal Party, 3 to Communists, and 9 others were

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factured two-thirds majority in both Houses sitting together." Hope for South Africa, New York, 1959, pp. 60-62. Mr. Paton is of course not unbiased, but further corroboration may be obtained from the analysis of the results of the 1953 general election contained in Gwendolen M. Carter, The Politics of Inequality, London, 1958, pp. 158-160.

8. For example, A. Lawrence Lowell, The Government of England, New York, 1924, v. 1, p. 451; Kurt Kluxen, Das Problem der Politischen Opposition, Munich, 1956, pp. 3-5. Professor André Mathiot recently suggested that one could almost study the British political system "entirely in terms of the relationship between the majority and the opposition." The British Political System, London, 1958, pp. 15-16.

9. See G. W. Choudhoury, "Parliamentary Government in Pakistan," Parliamentary Affairs, v. XI, no. 1, Winter 1957-1958, pp. 79-91, esp. p. 82.

10. Myron Weiner, Party Politics in India, Princeton, 1957, p. 24

scattered. Recent conflicts within the coalition have reduced the government's following to 47. The government is at present therefore a minority in the House, perilously sustained in power by the mutual hostility of opposition groups and by pledges of support on specific issues from various opposition and independent members. The main opposition group, Dr. Pereira's Trotskyists, are not supporters of parliamentary government. Dismissal of the government and dissolution are a possibility, but a current news report states that elections now would not "give a solid permanent majority to any party or coalition of parties."[11]

In Ghana, the general election of 1956 gave 72 of the 104 parliamentary seats to Prime Minister Nkrumah's Convention People's Party. 15 seats went to the Northern People's Party, 12 to the National Liberation Movement, 2 to the Togoland Congress, and 1 seat each went to the Moslem Association Party, the Federation of Youth Organizations and to an Independent. The five opposition parties amalgamated to form the United Party in November 1957. However, since the election five members have resigned from the opposition and gone over to the government. Two opposition members have been sentenced to long terms of imprisonment for being dangerous to the security of the state and have been deprived of their seats in the parliament. Mr. Nkrumah's Convention People's Party dominates national politics without effective challenge. A reviewer of the first year of Ghana's parliament notes that "the most marked feature of the past twelve months has been the decline of the Opposition." Another observer states that "leaders in Government and Party (C.P.P.) appear to be unanimous in their opinion that conditions in Ghana do not require an 'alternate government.'" Dr. Busia, the leader of the opposition, is at present a voluntary exile from his country.[12]

In Malaya, the general election of 1955 gave 51 of the 52 elected seats in the Legislative Council to the Alliance Party, comprising the United Malay National Organization (UMNO), the Malayan Chinese Association (MCA), and the Malayan Indian Congress (MIC). The remaining seat was won by the Pan-Malayan Moslem Association. Malaya is on the eve of a federal election, to be held on August 19, 1959, at which 104 seats in the parliament will be filled. Despite recent internal problems the governing Alliance Party is expected to continue its unchecked dominance of federal politics.[13] Thus, one-party hegemony characterizes the current politics of India, Ghana, and Malaya; an unstable multi-party system obtains in Ceylon; and in Pakistan it is not at the moment possible to speak of a party system at all. An effective loyal opposition party is scarcely in evidence in any of these countries.

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11. Tillman Durdin, The New York Times, 3 July, 1959. See also The Economist, 29 November, 1958, pp. 807-808 and 30 May, 1959, pp. 857-858.

12. See, respectively, D. G. Austin, "The Ghana Parliament's First Year," Parliamentary Affairs, v. XI, no. 3, Summer 1958, p. 356, and Henry L. Bretton, "Current Political Thought and Practice in Ghana," American Political Science Review, v. LII, no. 1, March 1958, pp. 52-53. Also The Economist, 15 November, 1958, p. 586; 31 January, 1959, p. 422; 4 July, 1959, p. 15. For the ouster of M. K. Apaloo and R. G. Amponsah from parliament, New York Times, 7 April, 1959.

13. See The Economist, 1 August, 1959, p. 280; New York Times, 11 July, 1959.

The contrast with the British model is therefore very great. What is one to make of it? Is comparison with the British model invidious? Does the lack of effective and loyal opposition spell doom for the future of democratic government in the nations of the new Commonwealth?

III

It is not fashionable these days to look to political theory for guidance when confronted with questions such as these. Nevertheless, a book has existed for almost a hundred years which anticipates these problems and gives them systematic consideration. The book is John Stuart Mill's strangely neglected Representative Government, published in 1861.[14] Much of it reads like a tract for the times despite its age, and the temptation to have recourse to it is irresistible.

Often it is argued that the great strength of British, and Commonwealth, political development has been freedom from theory, and a consequent reliance upon pragmatic improvisation within a continuing tradition. But theory does not necessarily mean a master plan to which a developing process must conform. Theory can also consist of a guide to the understanding, of an attempt, not to prescribe, but to render coherent and comprehensible a diversity of events.[15] Of theory in this latter sense British political development happily has not been free, as attested by a long succession of commentaries stretching at least from Hobbes and Locke to Lindsay, Laski and Barker. No comprehensive theory of this type has yet become generally accepted for the contemporary Commonwealth. Plainly, our understanding would be enriched by it. It seems worth exploring whether a reconsideration of Mill's Representative Government may serve as a first step toward the creation of a framework of understanding of the politics of the new as well as of the older Commonwealth.

The nations of the Commonwealth do share in common the ambition and - with varying degrees of success - the effort to practice representative government along lines similar to the pioneer forms evolved in Britain and the United States. Other nations have this purpose as well - Burma even shares the past experience of British rule - but membership in the Commonwealth at the least betokens a continuing special orientation toward the British model. For millions in the Commonwealth, British parliamentary democracy constitutes the most perfectly developed form of representative government. Essentially, however, it is the latter and not the former which they are attempting to attain. Obviously many features of the British practice of government are too deeply rooted in their unique history and experience to be transferable. This awareness prompts L. S. Amery's warning: "All over the East and, not least, within our own Empire, we have created a demand

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14. I owe my own re-acquaintance with the book to the suggestion of my friend Professor David Spitz of Ohio State University.

15. The basic dichotomy between theory as prescription and theory as analysis is elaborated in Thomas P. Jenkin, The Study of Political Theory, New York, 1955, pp. 1-4.

for constitutional forms which can only work in a homogeneous community like ours."[16]

One can agree that the diverse nations of the Commonwealth would not all be well served by exact replicas of the British constitution without denying that they may all practice representative government. But the extreme denial has its defenders. Professor Oakeshott, for instance, denounces the error "in which Mill convinced himself that something called 'Representative Government' was a 'form' of politics which could be regarded as proper to any society which had reached a certain level of what he called 'civilization.'" Oakeshott charges that Mill's views embrace "one of the most insidious current misunderstandings of political activity."[17] Institutions, he contends are not transferable.

Mill himself offered a convincing response to this charge. Professor Oakeshott argues from a Burkean assumption, of a tradition of political behavior whose essential principle is continuity, exclusive and indivisible. Mill appears implicitly to have taken Burke's attitude into account when he wrote:

> "No one believes that every people is capable of working every sort of institutions. Carry the analogy of mechanical contrivances as far as we will, a man does not choose even an instrument of timber and iron on the sole ground that it is in itself the best ... On the other hand, neither are those who speak of institutions as if they were a kind of living organisms really the political fatalists they give themselves out to be. They do not pretend that mankind have absolutely no range of choice as to the government they will live under, or that a consideration of the consequences which flow from different forms of polity is no element at all in deciding which of them should be preferred ... Political institutions (however the proposition may be at times ignored) are the work of men ... In every stage of their existence they are made what they are by human voluntary agency."[18]

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16. L. S. Amery, Thoughts on the Constitution, 2nd ed., London, 1953, p. 19.

17. "Political Education," in Peter Laslett, ed., Philosophy, Politics and Society, New York, 1956, p. 18.

18. R. B. McCallum, ed., On Liberty and Considerations on Representative Government By J. S. Mill, Oxford, 1948, pp. 110-111. It may be noted that Mill also appears to reply to a critique of his views founded on economic determinism. He identifies the critique: "The forces, it is contended, on which the greater political phenomena depend, are not amenable to the direction of politicians or philosophers. The government of a country, it is affirmed, is, in all substantial respects, fixed and determined beforehand by the state of the country in regard to the distribution of the elements of social power." The heart of Mill's counter-argument is: "To think that because those who wield the power in society wield in the end that of government, therefore it is of no use to attempt to influence the constitution of the government by acting on opinion, is to forget that opinion is itself one of the greatest active social forces." Ibid., pp. 116, 117.

To argue that men are free to choose representative government is of course not equivalent to arguing that they ought to do so. This latter conclusion is less a matter of facts than of preference. As a prime representative of that Liberal tradition in Western political thought which places the highest value on the maximum self-development of the human individual, Mill asserted his preferences categorically. His definition of representative government forms part of his statement of values:

> "The first element of good government, therefore, being the virtue and intelligence of the human beings composing the community, the most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves. The first question in respect to any political institutions is, how far they tend to foster in the members of the community the various desirable qualities ... moral, intellectual, and active. The government which does this the best has every likelihood of being the best in all other respects, since it is on these qualities, so far as they exist in the people, that all possibility of goodness in the practical operations of the government depends."
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> "There is no difficulty in showing that the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community; every citizen not only having a voice in the exercise of that ultimate sovereignty, but being, at least occasionally, called on to take an actual part in the government, by the personal discharge of some public function, local or general."
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> "It is evident that the only government which can fully satisfy all the exigencies of the social state is one in which the whole people participate; that any participation, even in the smallest public function, is useful; that the participation should everywhere be as great as the general degree of improvement of the community will allow; and that nothing less can be ultimately desirable than the admission of all to a share in the sovereign power of the State. But since all cannot, in a community exceeding a single small town, participate personally in any but some very minor portions of the public business, it follows that the ideal type of a perfect government must be representative."[19]

In principle, then, Mill believed that men could and should adopt representative government. And in principle, this belief is the common goal of the Commonwealth. To the new countries of the Commonwealth, the liberal tradition of Western

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19. Ibid., pp. 126-127, 141, 151, respectively. I subscribe to Mill's preferences, and also I agree with Professor Beloff's statement: "We are entitled to say, if we believe it to be true, that although there are other forms of political structure that work, that give the minimum of order and protection without which no society can function, yet from the point of view of the promotion of those virtues that men have sought for in political society, these other structures are inferior, that political life in a liberal democracy has certain positive qualities that other systems ignore." Max Beloff, "The Frontiers of Political Analysis," The Great Powers, New York, 1959, p. 38.

political thought in which this goal is rooted is alien doctrine. However, their leaders and the most socially active of their citizens have largely accepted this doctrine. The language and conceptualization of their politics reflects this. Phrases and objectives such as self-determination, autonomous institutions, even freedom and independence themselves, are in part witnesses to the magnetic attraction of Western Liberal ideas. Asian and African Commonwealth members are now attempting that process of institutional adaptation which Professor Oakeshott declares to be impossible and which John Stuart Mill advocated.

IV

Wishing, however, will not make things so. Mill stipulated three essential conditions, which, he said, must exist before any form of government can be deemed suitable for any people, and which are therefore also specific prerequisites for the adoption of representative government:

> "The people for whom the form of government is intended must be willing to accept it; or at least not so unwilling as to oppose an insurmountable obstacle to its establishment. They must be willing and able to do what is necessary to keep it standing. And they must be willing and able to do what it requires of them to enable it to fulfill its purposes."[20]

There can be no dispute but that Mill's first condition is in the main satisfied in the new nations of the Commonwealth. The latter two conditions raise the doubts. Mill suggests that, "in any case in which the attempt to introduce representative government is at all likely to be made, indifference to it, and inability to understand its pressures and requirements, rather than positive opposition, are the obstacles to be expected."[21] And there comes inevitably to mind the masses of Asian peasants and the tribal society of Ghana. Mill proceeds to state two harsh dicta: "When a people have no sufficient value for, and attachment to, a representative constitution, they have next to no chance of retaining it." "Representative institutions necessarily depend for permanence upon the readiness of the people to fight for them in case of their being endangered."[22] The attachment of popular majorities to representative government and their willingness to fight for its preservation are at the very least questionable in all of the new nations of the Commonwealth. Mill further warns that "mechanical difficulties are often an insuperable impediment." In addition to an implicit preoccupation with the level of popular education, his chief concern here is with the possible absence of "the physical conditions for the formation and propagation of public opinion."[23] One thinks at once, not only of inadequacies of communication and transportation in the jungles of Malaya or Ceylon, but of the drastic separation of West and East Pakistan. Mill reinforces this warning with a specific

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20. Op. cit., p. 111.

21. Ibid., p. 152.

22. Ibid., pp. 152, 153

23. Ibid., pp. 112-113

reference to "one of the strongest hindrances to improvement," namely, "an inveterate spirit of locality."[24] Again it is all too easy to discover an inveterate spirit of locality in the politics of the Asian and African members of the Commonwealth, reinforced all too frequently by linguistic, religious and racial barriers.

Mill concludes a consideration of "Under What Social Conditions Representative Government is Inapplicable" by discovering two opposite states of the inclinations. "One is, the desire to exercise power over others; the other is disinclination to have power exercised over themselves." The latter inclination Mill finds consonant with representative government. The former he judges to be a serious handicap, characteristic

> " ... of a people of place-hunters; in whom the course of politics is mainly determined by place-hunting; where equality alone is cared for, but not liberty; where the contests of political parties are but struggles to decide whether the power of meddling in everything shall belong to one class or another, perhaps merely to one knot of public men or another; where the idea entertained of democracy is merely that of opening offices to the competition of all instead of a few; where, the more popular the institutions, the more innumerable are the places created, and the more monstrous the over-government exercised by all over each, and by the executive over all."[25]

Mill offers 19th-century France as his example. It seems too soon to judge which of these two states of the inclinations will be displayed by the new nations of the Commonwealth.

What, then, is to be done in situations where desire for representative government is accompanied by conditions which frustrate its attainment? Mill proposes a solution. He argues that the chief reason why people may not be able to support representative government despite their wishes is a lack of attachment to freedom. Such a lack of attachment to freedom both stems from and continues to encourage a passive political attitude. Such an attitude cannot sustain representative institutions.[26] In Mill's opinion, there is constant interaction

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24. Ibid., pp. 155-156

25. Ibid., pp. 159-160

26. "Inactivity, unaspiringness, absence of desire, are a more fatal hindrance to improvement than any misdirection of energy; and are that through which alone, when existing in the mass, any very formidable misdirection by an energetic few becomes possible. It is this, mainly, which retains in a savage or semi-savage state the great majority of the human race." So says Mill, and contrasts the virtues of the attitude which greets a wrong with "what a shame" and a rush for prevention, with the attitude which endures wrong and says "il faut de la patience." Ibid., p. 148.

between governmental institutions and the character of the governed. Since the bulk of mankind are despotically ruled, they lack the experience of freedom which is a prerequisite for self-government. Mere removal of the despot will not produce the experience of freedom. Mill therefore thinks that people who are no longer slaves but cannot yet support representative institutions require, "not a government of force, but one of guidance." He explains that "the sort of government fittest for them is one which possesses force, but seldom uses it; a parental despotism or aristocracy, resembling the St. Simonian form of Socialism."[27] He is careful to say that he does not recognize the existence of an intrinsically good despotism. This he calls "an altogether false ideal." He will condone "the assumption of absolute power in the form of a temporary dictatorship." "But," he insists, "its acceptance, even for a time strictly limited, can only be excused, if, like Solon or Pittacus, the dictator employs the whole power he assumes in removing the obstacles which debar the nation from the enjoyment of freedom."[28] Mill all but coined the phrase, "guided democracy."

It should be noted here that Mill at no time meant that the government of guidance toward representative institutions should be colonial government. Of the latter he was a bitter and experienced foe. "It is always under great difficulties, and very imperfectly, that a country can be governed by foreigners," he said. "The government of a people by itself has a meaning and a reality; but such a thing as government of one people by another does not and cannot exist."[29] The temporary despotism whose indispensability Mill admitted had to be indigenous, not colonial.

V

A chief difficulty with Mill's study, from the point of view of contemporary political science, is the virtual absence of party from his discussion. Thus it appears to be true that in their quest for the achievement of representative government some of the new nations of the Commonwealth are passing through a phase of "parental despotism;" but the form of this despotism is not irresponsible monarchy, as Mill suggested it might be,[30] but the temporary monopoly of political power by a single political party. The development and availability of modern political parties has made it possible for several African and Asian members of the Commonwealth to achieve, with differing recipes, the same puzzling blend: the immediate adoption of representative institutions and the more or less authoritarian animation of these institutions by an elite in control of a dominant party.

Understanding of this phenomenon demands the recognition that a single-party system does not necessarily involve a totalitarian party. Ranney and Kendall

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27. Ibid., pp. 131-133.

28. Ibid., pp. 140-141.

29. Ibid., pp. 314, 315.

30. "It may be laid down as a political truth, that by irresponsible monarchy rather than by representative government can a multitude of insignificant political units be welded into a people ..." Ibid., p. 157.

define a one-party system as one "in which at most elections in the fairly recent past (a) one party has won all or nearly all of the offices, and (b) the second party has (I would here substitute "other parties have") usually received only a small percentage of the popular votes." They contrast this with the totalitarian one-party type, characterized as one "in which either (a) only one party has been permitted to participate in elections in the fairly recent past, or (b) any so-called parties other than the dominant single party that have participated are clearly fronts for the dominant party."[31] This definition admits Maurice Duverger's assertion that "there are several single-party systems, not one," as well as his subsequent "sacrilegious" coupling of the single party and democracy.[32] By this definition, India, Ghana and Malaya today exhibit single-party systems which are not totalitarian.

A single political party in a position of dominance appears to be a suitable instrument to apply to the solution of those problems of adopting representative government which Mill noted, and which the new democracies of the Commonwealth are experiencing. Peoples inexperienced in democracy primarily need guidance, and modern political parties can be characterized above all as instruments of political education. "What all the other agencies do not do - namely teach - and what cannot be done without special organizations - namely, to gether the talented and stimulate interest - political parties set out to accomplish," suggests Herman Finer.[33] And Duverger argues that "the technique of the single party, applied with discernment, makes it possible gradually to build up a new ruling class and the independent political elite which alone makes it possible to establish at some date an authentic democracy."[34] In the Asian and African members of the Commonwealth, it would seem that a single political party may fulfill at least four difficult tasks: It can bridge divisions of geography, race, religion, language and other impediments to national unity. It can recruit talent and make it politically effective. It can embody a program of political education. It can operate the constitutional institutions of representative government.

VI

The role that a single party can play in bridging divisive factors has been particularly well illustrated in Canadian politics. The five Provinces which confederated to form the Dominion in 1867 faced not only the rift between British and French Canadians, accentuated by differences of language and religion, and bitter memories of the past. A sizeable minority of Irish Catholics complicated the religious conflict, there was a notable lack of identity of economic interest between the Maritime Provinces and Ontario and Quebec, and Montreal and Toronto were economic rivals. Sir John A. Macdonald, who complained, "the difficulty is

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31. Austin Ranney and Willmoore Kendall, Democracy and the American Party System, New York, 1956, pp. 157-158.

32. Political Parties, New York, 1954, pp. 257, 275.

33. The Theory and Practice of Modern Government, rev. ed., New York, 1949, p. 276. The entire section called "Party is King!" emphasizes the help parties furnish to the electorate and supports Finer's quoted assertion. See pp. 274-282.

34. Op. cit., p. 280.

that there is no great party interested in fighting the battle of the Dominion,"[35] set out to forge his Liberal-Conservative coalition into just such a party. It is doubtful that Canada would have survived as a nation had parties emerged along French Canadian versus British Canadian lines. Instead, Macdonald ruthlessly used patronage and money to smother sectional interests. He rallied a majority behind his expansionist national policy which allowed his party to dominate Dominion politics until 1896. It is worth noting that the opposition, too weak to take full advantage of Macdonald's brief fall from power as a result of the Pacific Scandal in 1874, finally developed in the image of the governing party. The Liberal party which took office under Laurier was as much a party of integration as its predecessor in power had been, and became even more so during the long era of Mackenzie King.[36]

Similar phenomena are now in evidence in the new Commonwealth. The ability to promote politics of integration is marked by Myron Weiner as the chief characteristic of the Indian Congress Party.[37] David Apter refers to the Convention People's Party in Ghana as "the only clear-cut orientational focus" in the political picture, and explains that "it formed a major element in the societalization of what was a predominantly localized and fragmented set of tribal and regional areas, but hitherto without social cohesiveness beyond the tribal purview, excepting in municipalities and excepting a small educated minority of the population."[38]

Recruitment of talent and political education are more routine tasks of party activity. However, as Apter perceptively points out, these tasks are complicated in African and Asian societies by the existence of traditional non-secular factors in politics. The legitimization of secularity, indispensable for the conduct of politics which appeal to human reason, requires not only organization, but above all leadership. This leadership can very effectively be provided by the charismatic leader at the head of a dominant party movement; both Nehru and Nkrumah seem cast in this role. On this point Apter writes:

> "The efficiency of charisma lies in the fact that it satisfied the same functional requisites of leadership as did traditional leader-

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35. Letter to Brown Chamberlain, 26 December, 1868, Macdonald Papers, Public Archives of Canada.

36. See Frank H. Underhill, "The Development of National Political Parties in Canada," Canadian Historical Review, v. 16, no. 4, December 1935, pp. 367-387 and my own "Massive Alternation in Canadian Politics," Foreign Affairs, v. 36, no. 4, July 1958, pp. 633-644.

37. Op. cit., pp. 242-243, pp. 280-283. "More than any other party in India," Weiner says (p. 281) "Congress has successfully placated conflicting interest groups and ideologies." Weiner admits that "Congress stands as the largest and most powerful party in India ... and is probably the single most important force contributing to political stability in the country," but adds that "India by no means has a single-party system." (p. 280) However, his study makes it clear that the multi-party system he ascribes to India involves Congress Party dominance and the fragmentation of opposition, and that it falls within the definition of a single-party system offered by Ranney and Kendall.

38. The Gold Coast in Transition, Princeton, 1955, pp. 203, 212. In the original the second quotation is entirely in italics.

> ship in the past. Nkrumah's charismatic authority has replaced the chief's traditional authority by meeting the same functional requirements, but by introducing new types of structures for their satisfaction."
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> "Provided that it is used and controlled within the structural model of parliamentarianism, in which role definition and substantive norms of a different kind from those of charisma - norms of critical rationality, secularity, political representation via conciliar decision-making structures, public responsibility - are actually operative, charisma tends to make possible a viable central political system in what was hitherto an artificial territory."
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> (In Ghana in 1955) "the shift from traditionally to charismatically defined norms has occurred for effective public opinion, but the shift from charismatic to norms of secular rationality on a public level is only now beginning, strongly enhanced by Nkrumah himself."[39]

With reference to India, Weiner makes another point which has wider relevance. Listing elements of stability within the Indian political pattern, he comments: "As long as one party or a group of parties has firm control of the government, both the military and administrative services can be relied upon to support the government and system."[40] Perhaps nowhere is the recruiting and educational impact of a single party as great as in the encouragement it offers to bureaucratic stability.

It only seems a paradox that a single party should have the virtue, in the new democracies of Asia and Africa, of being best able to operate representative institutions. However, the new countries of the Commonwealth, profoundly influenced by British tutelage, have unanimously been attracted toward the cabinet form of parliamentary government. Cabinet government as currently defined rests on the existence of a responsible party. The creation of such a party is in itself an immense achievement. As was true of Macdonald in the Canada of 1867 and of Nehru and Nkrumah today, these men and their parties attained responsibility and built their party organizations on the foundation of a nationalist movement aiming at political autonomy. Their ability to create parties of integration depended essentially on the emotional ties furnished by an ambitious nationalism. It is almost inconceivable that rival parties of integration should rise at an early stage of autonomous politics. To be anti-nationalist would seem to offer them little chance of attaining popular support. To be nationalist but to oppose the dominant leadership is a task which above all requires the emergence of ample leadership from the ranks of the opposition. Furthermore, the economic status of Asian and African nations is generally such as to offer virtually no economic base for an opposition party, if the controlling party manipulates a program of economic expansion. The process of attracting leadership and economic support away

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39. Ibid., pp. 304, 306, 308. With the exception of the five words after the last comma, the quotations in the original are again entirely in italics.

40. Op. cit., p. 279.

from the controlling party, in which the best hope of the opposition lies, inevitably requires time. Of course subversive opposition is instantaneously possible, especially if elements of leadership and financial support can be furnished from abroad. But such opposition is not likely to produce parties of integration.

The character of the controlling party appears to be significantly affected by the governmental institutions it operates. The new member countries of the Commonwealth have been fortunate in attaining political autonomy, not without struggle, but without the ultimate need for violent revolution. British cooperation during the definitive phase of transfer of sovereignty helped to make it possible for successful nationalism to adopt the constitutional trappings of representative government. Implicit in this adoption is the rejection of totalitarian democracy, which would aim at the rapid achievement of a radically new order through the politization of the whole society.[41] A dominant single party may well be indispensable for the initial success of representative institutions, and at the same time the advocacy of these institutions by that party may have vital consequences for the commitment to democracy of the latter. Again, Apter offers an instructive illustration:

> "It is true that for most of the members of the Convention People's Party effective legitimacy does not flow from British political norms, behavioral restrictions, or procedural limitations, although these intervene in increasing fashion. Rather, legitimacy remains the prerogative of Nkrumah, stemming from the charismatic aspects of his leadership. Yet, as we have indicated, Nkrumah has chosen to endow the parliamentary structures with his 'gift of grace.' He did so in such a fashion as to give instrumental vitality both to his program and objectives, and to the structures of secular government as well. To the extent that the Convention People's Party is committed to parliamentary structures, it organizes its activities and focuses attention on the warrants of secular political life ... With the Nkrumah constitution the C.P.P. has set its objective within the limits of parliamentary structures to such an extent that it would seem almost impossible for any leader to disengage from such a political pattern."[42]

It appears to be too early to judge how the future of democracy in Ceylon will be affected by the collapse of the United National Party, under which autonomy was achieved.[43] The present fragmentation of the Freedom Party government is not encouraging. A clearer point may be made with reference to Pakistan. No dominant

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41. For this concept, see J. L. Talmon, The Origins of Totalitarian Democracy, London, 1955.

42. Op. cit., pp. 296-297.

43. It is interesting to note that this collapse followed the accidental death of D. S. Senanayake, the party's leader and prime minister, on 22 March, 1952. Mr. Senanayake's charisma as leader was sufficiently great so that his son was pressed into the succession despite the latter's reluctance. See Sir Ivor Jennings, The Constitution of Ceylon, 3rd ed., London, 1953, p. 33.

party emerged to operate representative institutions, and these have now been indefinitely suspended after years of difficulty.

The great danger, of course, is that the leaders who control the dominant single parties in new democracies will ignore Mill's caution that "leading strings are only admissible as a means of gradually training the people to walk alone."[44] Unchallenged exercise of authority may corrupt the best intentions. The forms of representative government may not take on new life but become ever more meaningless mockeries.[45] There can be no guarantee that this will not happen. But it may be said that the best indication of the viability of representative government will be the development of a responsible and loyal opposition party which offers the prospect of an alternative government. The fact that this development will take some time does not render it of any less importance ultimately. Such a development will require above all that the ruling single party regard its dominance as a necessarily temporary phenomenon. An attempt to establish the single party system permanently, by the elimination of electoral opportunities for rival parties, would constitute a probably fatal step toward totalitarianism.

A delicate line needs to be drawn here. As Mill was well aware, newly installed representative government may need to be defended. This need appears to be virtually inevitable in view of the challenges offered by communism in the new democracies. A single party as the operator and defender of representative institutions may legitimately determine on repressive action against Marxist or other parties which plan constitutional change by coup d'état. It may be equally necessary to repress opposition in terms of the politics of assassination, as the government of Ghana claims to have had to do. On the other hand, there is Talmon's warning: that the condition "that freedom could not be granted as long as there is an opposition or reaction to fear, renders the promised freedom meaningless. Liberty will be offered when there will be nobody to oppose or differ - in other words, when it will no longer be of use. Freedom has no meaning without the right to oppose and the possibility to differ."[46] It is truistic but important that the provision for rivalry and the expression of differences within an institutional framework is one of the best means of preventing rivalry and the expression of differences from assuming subversive forms. While it is commonly asserted that political parties can function effectively only if they operate within a shared political consensus, it seems at least as true that a constitutional framework which encourages the competition of parties may contribute to the accommodation of parties to that framework.[47]

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44. Op. cit., p. 133.

45. Writing a decade ago, Duverger based the whole of his case for the compatibility of democracy and the single party on the example of Turkey. Contemplation of Turkey today is not reassuring.

46. Op. cit., p. 254.

47. This suggestion concludes an essay by Gerhard Loewenberg, "The Transformation of British Labour Party Policy Since 1945," The Journal of Politics, v. 21, 1959, pp. 234-257.

Occasionally it is suggested that prolonged, if not semi-permanent, one-party dominance is normal in and compatible with representative government.[48] But while it appears to be perfectly true that one of two or more parties in a system may dominate the political process for long periods, it cannot be argued that such a development is without dangers to democracy. Nor can it be asserted that democracy could endure if the dominant party suppressed its rivals or interfered with the freedom of elections. Recent Canadian experience illustrates the former danger: The attempt of the Liberal government to railroad its Pipeline Bill through the Canadian House of Commons, contemptuous of the need for parliamentary debate and ruthlessly indifferent to the rights of the opposition, which marred the last months of the long era of Liberal Party dominance of Canadian politics running almost unbroken from 1921 until 1957, may be cited as one example of the corrupting effects of authority unchallenged for too long.[49] South Africa offers an example of a dominant party attempting to guarantee its paramountcy by manipulation of the electoral system. However, the Nationalist Party openly advocates the restriction of representative government to the white minority of the population, and doubts are in order as to its commitment to democratic principles.[50]

A different type of suggestion has recently come from Otto Kirchheimer. Professor Kirchheimer believes that in Britain and on the continent of Europe, something like a unified middle-class society may be emerging, and that in such a society interest representation rather than the opposition of classes becomes the basis of politics. He argues that the leveling influence of the mass media and a lessening of social polarization have brought about a decline of the classic parliamentary opposition. "We are faced," he claims, "with a somewhat languishing system of inter-party competition which in many cases is even overshadowed by intraparty competition, the attempt of the various interest groups represented in

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48. A recent exposition of this point of view is Donald V. Smiley's "The Two-Party System and One-Party Dominance in the Liberal Democratic State," Canadian Journal of Economics and Political Science, v. 24, no. 3, August 1958, pp. 312-322.

49. A forceful indictment of the conduct of the government may be found in Eugene Forsay, "Constitutional Aspects of the Canadian Pipe Line Debate," Public Law, v. 2, Spring 1957, pp. 9-27.

50. The Nationalist Program advocates "the Christian trusteeship of the European races" over the rest of the population and stipulates that "constitutional change can be brought about only as the result of a special and definite mandate from the European electorate, and not merely by a parliamentary majority obtained as the result of an ordinary election." Quoted in G. M. Carter, The Politics of Inequality, pp. 469, 468. Professor Carter's discussion of Nationalist Afrikanerdom (pp. 218-281) indicates the strong anti-democratic tendencies within this movement.

There is a provocative essay by P. E. Trudeau which raises the question as to what degree the single-party dominance of Quebec Province by the Union Nationale rests on hostility to democracy. Trudeau's thesis is that "French Canadians have not really believed in democracy for themselves; and English Canadians have not really wanted it for others." "Some Obstacles to Democracy in Quebec," Canadian Journal of Economics and Political Science, v. 24, no. 3, August 1958, pp. 297-311.

one party to have an official party stand adopted that is maximally favorable to them." Under these circumstances, Professor Kirchheimer proposes that the Austrian practice of government by coalition pacts with built-in opposition devices offers the means for a limited survival and revival of the opposition concept.[51] It is relatively easy to extend this reasoning toward advocacy of a single-party system which would provide built-in opposition by institutionalizing intraparty competition. Institutional devices suitable to this purpose are already familiar, chief among them being the primary election.

VIII

However, it would seem that the cabinet form of representative government logically demands the possibility of an alternate government, provided by an opposition party or an opposition coalition. And it further seems that the British practice of cabinet government encourages the existence of this type of opposition. It is not necessary to this contention to argue the question of causality. One may agree that a parliamentary opposition was present in Britain during the evolution of the practice of cabinet government, and that it is therefore historically inaccurate to claim that the cabinet system caused the creation of the opposition. But such agreement does not deny the fact that the current practice of cabinet government in Britain and the existence of the parliamentary opposition are interdependent and encourage one another. To imitate contemporary British cabinet government means to assume, as the model does, the existence of an opposition capable of forming an alternate government. Such an assumption may not cause this opposition to come into being, but the institutional aspects of the assumption may encourage its development, given other favorable conditions. Such institutional aspects may range all the way from the logical consequences of the possibility of parliamentary dissolution and the formal recognition of the leader of the opposition, to the suitable type of electoral system.[52]

It is not necessary to postulate that this contention requires the emergence of a two-party rather than a multi-party system. Unquestionably the dialectical aspect involved in the alternation of responsibility in the hands of incumbent government and responsible opposition assumes a duality. But as British experience, Canadian experience and particularly Australian experience have shown, this duality need not rest, always or exclusively, on a two-party system. In a very recent essay Professor Lipson has demonstrated the flexibility with which the party systems of the Commonwealth have adapted to the duality between government and opposition implicit in the British practice of cabinet government. He points out that radically different social pressures produce a wide diversity of parties in

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51. "The Waning of Opposition in Parliamentary Regimes," Social Research, v. 24, no. 2, Summer 1957, pp. 127-156, quote on p. 149.

52. An excessive preoccupation with causality weakens the discussion of the British party system by Leslie Lipson. Professor Lipson argues that the nature of a society is more important for the determination of the character of a party system than is the structure of political institutions. His demonstration that British institutions did not cause the party system leads him, in my opinion, to under-rate the role these institutions now play in maintaining the system. See his "The Two-Party System in British Politics," American Political Science Review, v. XLVII, no. 2, June 1953, pp. 337-358.

the countries of the older Commonwealth. But he confirms that they all (he includes South Africa) "conform principally to the two-party model." Significantly, he characterizes Australia's party system as "a duet in function and a trio in form."[53]

It may be asked why, if the practice of cabinet government assumes duality between incumbent government and opposition, this duality is so much more evident in British practice or in those systems imitative of the British than it is in the systems of the European continent or others. Without denying the relevance of social and historical factors to the answer, it may also be argued that this phenomenon is linked to the nature of the parliament in the British and imitative systems. As L. S. Amery insists, "the main task of Parliament is ... not to legislate or govern."[54] In this respect, parliaments of the British type differ significantly from other varieties. They conform more closely to the model suggested by John Stuart Mill. Mill argued that "the proper duty of a representative assembly in regard to matters of administration is not to decide them by its own vote, but to take care that the persons who have to decide them shall be the proper persons." Further, that "it has never been thought desirable that Parliament should itself nominate even the members of a Cabinet." And still further, that "it is equally true, though only of late and slowly beginning to be acknowledged, that a numerous assembly is as little fitted for the direct business of legislation as for that of administration." Mill concludes that "instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly is to watch and control the government: to throw the light of publicity on its acts: to compel a full exposition and justification of all of them which any one considers questionable; to censure them if found condemnable, and, if the men who compose the government abuse their trust, or fulfill it in a manner which conflicts with the deliberate sense of the nation, to expel them from office, and either expressly or virtually appoint their successors."[55]

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53. "Party Systems in the United Kingdom and the Older Commonwealth: Causes, Resemblances, and Variations," Political Studies, v. VII, no. 1, February 1959, pp. 12-31, quotes on pp. 18, 27.

54. Op. cit., p. 12.

55. Op. cit., pp. 166, 167, 168, 172. Because parliament's failure to govern is so often still associated with criticisms of its ineffectiveness or opinions of its decline, it is worth quoting Mill on this point also: "Representative assemblies are often taunted by their enemies with being places of mere talk and bavardage. There has seldom been more misplaced derision. I know not how a representative assembly can more usefully employ itself than in talk, when the subject of talk is the great public interests of the country, and every sentence of it represents the opinion either of some important body of persons in the nation, or of an individual in whom some such body have reposed their confidence. A place where every interest and shade of opinion in the country can have its cause even passionately pleaded, in the face of the government and of all other interests and opinions, can compel them to listen, and either comply, or state clearly why they do not, is in itself, if it answered no other purpose, one of the most important political institutions that can exist anywhere, and one of the foremost benefits of free government." Ibid., p. 173.

A system in which virtually total responsibility to govern is turned over to the cabinet must either become authoritarian or render the cabinet significantly accountable by providing the possibility of an alternate government. In this sense, Sir Ivor Jennings justly states that the opposition is "a definite and essential part of the Constitution."[56]

Max Beloff has suggested that the monopoly of opposition by one party and the elevation of the leader of the opposition to the post of rival prime minister may greatly distort the representation of opposition sentiment in a country. He argues also that the pressures of foreign and economic policy may be so great as to make the technique of alternate government extraordinarily difficult.[57] There is truth in these assertions, but they do not negate the indispensability of the opposition as an alternate government in the British type of cabinet system. Rather, these considerations may serve as a reminder, not only that it is the function of a party system to distort the diversity of public opinion into policy alternatives, but also that in Britain at least arrangements have come into being through which prime minister and cabinet effectively contribute to enhance the qualifications of the leader of the opposition to lead an alternate government. "At various critical junctures in international affairs both before and since the second World War," Professor Beloff confirms, "Opposition leaders have been kept informed by the Prime Minister of the day."[58] It seems more likely that the practice of opposition will be adapted to changing circumstances than that the latter will erode the need for the opposition.

Accordingly, it may be hoped that the single parties which are leading their countries into the usages of representative government will refrain from a totalitarian perversion of representative institutions, and that they will then in due time find themselves effectively challenged by a parliamentary opposition. Undoubtedly the optimum example of this development would be the rise of a single major opposition party with an integrating capacity similar to that of the dominant party, and sufficiently well-led to attract away sufficient support from the incumbent government to come securely into power. There is no reason, however, why under the complicated federal conditions of India or in Ghana a coalition of opposition parties might not express the requisite quality with almost equal effectiveness. It is reassuring to recall that in Britain the parliamentary opposition grew from conditions of one-party dominance, which fostered internal stability and thus helped to found that consensus as to constitutional forms on which the party system rests.[59]

Time, courage and perseverance will be needed by those who would lead the opposition-to-be in the new countries of the Commonwealth. They might find comfort in the admonitions of a pioneer in the evolution of the parliamentary opposition in

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56. Parliament, p. 158.

57. See "The Leader of the Opposition," Parliamentary Affairs, v. XI, no. 2, Spring 1958, pp. 155-162.

58. Ibid., p. 162.

59. This point is emphasized by Carl J. Friedrich in his Constitutional Government and Democracy, rev. ed., New York, 1950, pp. 411-413.

Britain. Writing in the turbulent decade of the 1730's, Lord Bolingbroke attempted to rally his faction against the Whig hegemony with these words:

" ... There is little difference, as to the merit or the effect, between opposing faintly and unsteadily, and not opposing at all: nay, the former may be of worse consequence, in certain circumstances, than the latter. And this is a truth I wish with all my heart you may not see verified in our country, where many, I fear, undertake opposition not as a duty, but as an adventure: and looking on themselves like volunteers, not like men listed in the service, they deem themselves at liberty to take as much or as little of this trouble, and to continue in it as long, or end it as soon, as they please ... Remember ... that you do not only combat present evils, but attempts to intail these evils upon you and your prosperity; that if you cease the combat, you give up the cause; and that he, who does not renew, on every occasion, his claim, may forfeit his right ... "

"They who affect to head an opposition, or to make any considerable figure in it, must be equal, at least, to those whom they oppose; I do not say, in parts only, but in application and industry, and the fruits of both, information, knowledge, and a certain constant preparedness for all the events that may arise. Every administration is a system of conduct: opposition, therefore, should be a system of conduct likewise; an opposite, but not a dependent system ... "

"According to the present form of our constitution, every member of either house of parliament is a member of a national standing council, born, or appointed by the people, to promote good, and to oppose bad government; and if not vested with the power of a minister of state, yet vested with the superior power of controuling those who are appointed such by the crown. It follows from hence, that they who engage in opposition, are under as great obligations to prepare themselves to controul, as they who serve the crown are under to prepare themselves to carry on, the administration: and that a party, formed for this purpose, do not act like good citizens, nor honest men, unless they propose true, as well as oppose false measures of government. Sure I am, they do not act like wise men, unless they act systematically, and unless they contrast, on every occasion, that scheme of policy which the public interest requires to be followed, with that which is suited to no interest but the private interest of the prince, or his ministers. Cunning men (several such there are among you) will dislike this consequence, and object, that such a conduct would support, under the appearance of opposing, a weak, and even a wicked administration; and that to proceed in this manner, would be to give good counsel to a bad minister, and to extricate him out of distresses that ought to be improved to his ruin. But cunning pays no regard to virtue and is but the low mimic of wisdom. It were easy to demonstrate what I have asserted concerning the duty of an opposing party: and I presume there is no need of laboring to prove, that a party who opposed, systematically, a wise to a silly, an honest to an iniquitous, scheme of government, would acquire greater reputation and strength, and arrive more surely at their end, than a party who opposed, occasionally as it were, without any common system, without any general concert, with little uniformity, little preparation, little perseverance, and as little knowledge or political capacity."[60]

60. "A Letter on the Spirit of Patriotism," The Works of Henry St. John, Lord Viscount Bolingbroke, London, 1754, v. III, pp. 12-31, passim. (Italics mine.)

Ultimately, as Mill and so many others have insisted, it is the attachment of the people which will either preserve or condemn representative government. A single party whose long - but not permanent - and freely determined dominance accustoms a people to representative institutions may be considered a boon; while the consent of a people experienced in representative government to the arbitrary entrenchment of a single party in constitutionally unassailable power gives evidence that they have lost their attachment.[61] From this viewpoint, the present lack of opposition parties in the Asian and African newcomers to the Commonwealth offers little ground for pessimism as to the future of representative government in these lands. Ominous portents, however, attend the electoral shackling of the parliamentary opposition in South Africa.

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61. This echoes Duverger's formulation: "A fundamental distinction must be made between the single parties set up in previously democratic systems in which pluralism existed and single parties set up in countries already subject to autocratic rule and without experience of real pluralism ... (In the latter instance) the new system is more democratic than the old. On the other hand, when the single party replaces pluralism it suppresses or diminishes democracy." Op. cit., p. 279.

ORGANIZATION FOR NATIONAL POLICY PLANNING IN THE UNITED STATES

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Policy can be roughly defined as agreement on the objectives of action and on the means of achieving those objectives -- on where you want to go and how you propose to get there. The making of American national policy involves immensely complex and often messy procedures. Different American administrations have approached the task with quite different concepts of the nature of the policy process and of the techniques to be preferred.

In recent years, we have witnessed an increasing reliance by the Eisenhower Administration on a series of "distinguished citizens committees," composed mainly of prominent private citizens and established to review past policies and to make recommendations as to the objectives and courses of future American action. Two years ago, the Gaither Committee made its report to the President on certain parts of our defense program. This year, there have been several groups engaged in reviewing other important aspects of our foreign policy. The Draper Committee, for example, examined the objectives and programs of military assistance in relation to economic assistance. Another committee, selected from the Business Advisory Council and under the chairmanship of President Harold Boeschenstein of Owens Corning Fiberglas, looked into the problem of the Soviet economic offensive and the policies appropriate to meeting it. Again, the Straus group reported on the assistance that private groups, business or other, can give to our policies in the underdeveloped countries.

The growing emphasis on the "distinguished citizens committee" technique raises a number of questions about the policy process that are worth examining. How have past administrations attempted to mobilize fresh ideas on American national policy, to evaluate these ideas, and to translate them into action? What are the most effective methods of drawing on the experience and resources of individuals and groups outside the Executive Branch of the government? What are the relative advantages or disadvantages of relying heavily on

non-governmental committees for policy recommendations? What are the requirements of the policy process that affect its procedures of operation?

If we start with the last -- and more general -- question, we first need to clarify and give more specific content to what we mean by policy. I have already offered one definition: agreement on the objectives of action and the means of achieving those objectives. To this, I would add the further qualification that a policy can hardly be taken seriously unless the courses of action chosen are actually executed and reasonably achieve their intended effects.

For the sake of analysis, three different phases of the policy process can be distinguished from one another, although, of course, in practice the demarcation lines between them will be fuzzy and the phases will overlap. Roughly, these may be described as the formulation phase, the decision phase, and the execution phase. The first is an intellectually creative process in which a policy is suggested and a program of action proposed that is calculated most effectively to achieve the specific objectives of that policy. The second phase involves not only that of arriving at a coordinated and authoritative decision but also the politically essential and often arduous task of marshalling a consensus behind the proposed policy and program. During the course of this phase, the policy may be subjected to greater or lesser modifications, but necessary if the policy finally decided upon is to command wide enough support to ensure its eventual execution. The final and perhaps most difficult phase is putting the chosen policy and program into action which includes the problems of meeting unforeseen obstacles and of capitalizing on unforeseen possibilities. This final phase of execution often takes on continuing elements of the first and second phases. Objectives and methods of procedure are modified in the light of actual practice. Action builds a measure of consensus among those who are acting together. A periodic check and audit of the action process by those who made the original decision is often necessary sometimes to assure that necessary action is promptly gotten under way, sometimes to restrain the built-in momentum of an action program and to keep the program in proper relationship to the broader aspects of overall policy. On the other hand, too detailed back-seat driving of an action program can stultify it.

In the field of national policy, the last phase -- the execution of chosen courses of action -- is clearly the responsibility of the Executive Branch of the government. Furthermore, the job of formulating policies and programs -- the first phase, in which new policies are thought through and proposed for decision -- has also become largely an Executive Branch function, particularly as to those aspects of national policy which involve foreign policy and defense. The Legislative Branch plays an important role mainly in the second phase. Only if the Congress becomes part of the consensus behind a given line of policy is there any prospect that the tools necessary to its execution will be forthcoming. And Congress must participate in the periodic check and audit of the action program.

How does the Executive Branch go about developing national policy and programs? The process involves a most varied, complex, ill-defined, and often ad hoc collection of procedures. The role of the Secretary of State, is, of course, crucial. Within our working constitution, he is not only the Minister for Foreign Affairs, but he is also in part the Prime Minister as well -- unless, as did Woodrow Wilson and Franklin Roosevelt, the President choose to be his own Prime Minister, Presidents rarely overrule the recommendations of their Secretaries of State, and, conversely, a policy is usually dead if it does not receive the approval of the Secretary of State.

The role of the Secretary of State in the national policy process has, of course, its limits: he cannot himself generate and check for feasibility and consistency all the recommendations for policies and programs bearing on the position of the nation in the world as a whole. In the Truman Administration, the usual procedure on national security matters -- matters involving a mixture of political, military, economic and psychological considerations -- was to put together a small ad hoc group of the best informed, imaginative, and practical people to be found at the working levels of the principally concerned departments and agencies of the government, relieve them of their regular duties, and ask them to work out the best policy proposal they could devise. The original stimulating idea might come from almost any source -- from our people overseas, from a newspaper commentator, from the President, from the Secretary of State, from someone in the Policy Planning Staff or in the Pentagon. I remember one occasion, when I was with the Policy Planning Staff, on which Colonel

George Lincoln, now of West Point, called me on the phone and raised considerable cain with me personally and the State Department in general because we hadn't come up with something for Asia comparable to the Marshall Plan for Europe. His call was one of the several events which led to a process that, in the end, produced Point Four.

After a proposal for a new policy or for a policy shift, with related programs, was mapped out, at least in general outline form, it was subjected to the long and laborious procedure of the decision-making phase. Before a proposal could be gotten through the National Security Council, and, if necessary, Congress, an enormous task of consensus building was necessary at many different levels within and outside the Executive Branch. This procedure was often elaborate and time-consuming, although it could be speeded up by a firm expression of support from the Secretary of State or from the President. But in most cases a shift of policy was subjected to a lengthy process of tugging and hauling before it was given authoritative approval and put into execution.

Under the Eisenhower Administration, new approaches have been made to the process of policy formulation and decision. Initially this Administration decided that greater reliance should be placed on the National Security Council, that the machinery of the N.S.C. should be strengthened, and that its policy role should be broadened to include the first as well as second phase. It can be argued that this move was wrong in theory and abortive in practice. The essential function of the National Security Council is to assist the President in resolving the Executive will. It is a decision-making body. It is involved in the second phase of the policy process and so heavily involved that it does not perform well when asked to take over the functions of the first phase -- the development of proposals for new policies and programs. Imagination becomes stifled by jockeying and compromising for departmental advantages in the final decision.

To develop a policy proposal adequate to meet a new and important problem requires a high degree of objectivity and ruthless intolerance for one-sided or prejudiced views. It requires a concentrated and extended effort of the imagination to fit the myriad pieces of the problem together into a new pattern of policy which will fit the real situation and which can, in practice, be executed with a fair prospect of achieving its objectives. Most men are able to do such work only

under favorable conditions. When they are subjected to the full pressures of inter-service and inter-departmental rivalries -- in the very arena of decision-making where the President is to make the final and authoritative decision -- the conditions for objectivity and for extended creative and imaginative work are usually not present. Jockeying for departmental advantage in such a forum begins at the first moment that a new policy problem comes up for discussion. Compromises begin even at the information-gathering stage. Imagination is stifled.

Even more important are the effects on the rest of the Executive Branch of the decision to concentrate in the N.S.C. machinery the responsibility for the formulation of new national policy ideas. One result is to relieve others of a full sense of their responsibility. It becomes unnecessary for those in the State Department or Defense Department who are not part of the N.S.C. machinery to worry much about new national policy ideas.

Furthermore, giving the N.S.C. the job of policy formulation tends to cut off cross-fertilization of ideas between the departments and the services. Each department is fighting a battle in the N.S.C. for what it considers its point of view. It therefore mobilizes the information in its possession for presentation to the N.S.C. in a manner that will support and show off the departmental viewpoint to best advantage. This approach tends to restrict the practice of extensive cross-contact between the personnel of different departments since such contacts may give another department the information with which one's own departmental viewpoint can be rebutted. In sum, very unhealthy processes can be put in chain. In any case, the decision "to strengthen the N.S.C." does not seem to have produced results wholly satisfactory even to those who had instituted the change.

Not satisfied with the N.S.C. technique, the Eisenhower Administration has turned more and more to rely on outside groups or committees of private citizens, appointed to assist in the tasks of policy review and formulation -- the committees I mentioned earlier. But I am concerned that this technique, too, will be found inadequate.

The advantage of the non-governmental committee is its freedom from the inter-departmental squabbles, pulling and hauling, and compromise that have characteristically inhibited

such bodies as the National Security Council. But there are disadvantages to the "distinguished citizen committee" technique that may outweight the value of the relatively free atmosphere in which it is able to operate. The most serious of these is the possibility that the committee may be too far removed from Executive Branch responsibility to be fully effective. Those members of the Executive Branch who are actually responsible for carrying out policy -- the third aspect of the policy process -- feel, perhaps rightly, that such groups are out of touch with the real problems with which the officials, in the end, must always deal. In any case, it is obvious that the committee, once its report has been presented, is in a poor position to help fight its recommendation through the decision stage. Both of these difficulties characterized the reception of the Gaither Report two years ago and may well similarly affect the reception of the Draper Committee's report now.

Let us now examine a few of the other proposals which have been made recently for improving the organization of the United States government for national policy planning.

There is one school of thought that believes that our difficulty is that we have too much organization, too much staff work, too many committees, too little delegation and concentration of power and responsibility in specific individuals. I tend to agree with much that these critics of governmental over-organization have to say. Government by committee can result in lack of decision, fuzzy decisions, delays, frustration and such a defusion of power that it is impossible to hold anyone responsible for non-action, delayed action or wrong action. But it is impossible to run an organization as complex as the U.S. government without some resort to the committee technique. Policy and action have to be coordinated. The views of interested departments and agencies have to be heard. In other words some form of committee technique must be resorted to.

How can these dilemmas be resolved or at least mitigated? One line of approach is to cut down, as far as possible, the number of issues which rise to the Presidential, or N.S.C. level, for resolution. Perhaps a distinction can be made between national strategy and national policies and programs. Obviously national policies and programs must be consistent with, must support, and must be adequate to carry out, the

national strategy. But is it essential that the great bulk of these policies and programs go to the Presidential level for resolution? Must the President be asked to decide on the policy papers with respect to each country or with respect to every functional program? If the President isn't to decide them, who is to do so? In most instances more than one department or agency is involved.

If the President is prepared to look upon his Secretary of State as being more than a Secretary for Foreign Affairs if he is prepared to look upon him as having some of the attributes of a Prime Minister in the British system, then it is possible to delegate to the Secretary of State some of the decisions which otherwise must of necessity clog the N.S.C. machinery. The Secretary of State may be able in turn to delegate a portion of these decisions to subordinates in whom he has confidence.

Under such a system the President and the N.S.C. would be continuously concerned with the broad lines of national strategy, with particular issues which arise on the moving front of developing strategy, and with issues raised on appeal from the Secretary of State's decision by other departments and agencies. The number of such appeals to the President could be held to reasonable proportions if practice had demonstrated that the President could normally be expected to back up his Secretary of State's decisions.

But is the staff work available to the Secretary of State adequate to enable him competently to carry these responsibilities in addition to those which his functions as Secretary for Foreign Affairs place upon him? A strong case can be made that it is not. Where can properly equipped and properly trained staff for this function be found? The Wristonization of the State Department may have improved the prospects for developing an effective Foreign Service. But the Wriston program was not designed specifically to develop the qualities required for the type of staff work involved in working on national policy issues.

Perhaps consideration should be given to the selection and training of a special corps of national policy staff assistants. Those selected from the Foreign Service might be given tours of duty with the Joint Staff of the Joint Chiefs of Staff, with the Bureau of the Budget, or with the Treasury before being assigned to national policy staff positions.

Those selected from the military services might be given tours of duty with the State Department, with the C.I.A. or with the office of the President's Scientific Advisor. Once such a corps of specialists in national policy -- but generalists with respect to the various parts of the national policy problem -- was developed, members thereof could be assigned to strengthen the staff of the N.S.C., to assist the Secretary of State, perhaps as members of the State Department's Policy Planning Staff, to work on the staff of Secretary of Defense or that of the Assistant Secretary of Defense for International Security Affairs.

Another school of thought favors the creation of additional machinery to improve the coordination of staff work between the State Department and the Pentagon. It is their thesis that most of the shortcomings of national policy planning have arisen in the area which is neither purely political or purely military and which falls between the clear responsibilities of the Secretary of State and the Secretary of Defense. Part of the difficulty has arisen from periodic prohibitions by Secretary of Defense or by the Chairman of the Joint Chiefs of Staff on exchange of information and views at lower levels between the Pentagon and the State Department without specific prior authorization from the top. Another part of the difficulty is that the State Department is not well equipped with people who have an adequate understanding of current military matters to enable them effectively to deal with problems having both political and military aspects.

Increased coordination, contact and exchange of information between the State Department and the Pentagon is hardly a question of organization. If such contact is at any time inadequate, a word from the President, at the request of either of the Secretaries should be adequate to correct the situation. The more difficult question is that of making the contact and exchange of information useful in improving the quality of national policy planning.

It has been suggested that just as each of the service departments and the Department of Defense is assisted by specialized outside technical assistance, the State Department -- or the N.S.C. -- should be similarly assisted. The Air Force has the assistance of the RAND Corporation, the Army of the Operations Research Office of Johns Hopkins University, the Navy of the Applied Physics Laboratory and the Department of Defense of I.D.A., the Institute of Defense

Analyses. These institutions dispose over large numbers of highly qualified men not only in the physical sciences, but in the social sciences as well. Everyone who deals seriously with military-political problems avails himself as best he can of their expertise. Their primary responsibility, however, is to the department or service which employs them. Shouldn't those who are dealing with national policy problems at the highest level have available to them expert talent of at least the same quality? One possibility is that an organization similar to I.D.A. but more heavily oriented toward political, economic, and psychological expertise be attached organizationally to the State Department but housed with I.D.A. so that there could be continuous cross-fertilization of ideas between the weapons-systems experts and the political experts.

A third school of thought advocates the creation of additional national policy machinery outside of the Executive Branch of government. Various proposals have been made for a National Policy Academy or for a continuing high level commission of ex-Presidents, representative distinguished citizens, etc., to work on problems of national policy.

In my view, there is a general presumption against the creation of additional national policy machinery outside of the Executive Branch. Such an institution will not always see eye to eye with the Executive Branch. It may constitute one more hurdle which those responsible for action have to overcome before action becomes possible. The net result may be one more step toward assuring, through excessive division of power and responsibility, a national policy of massive passivity.

In considering this class of proposal, it is important to be clear as to the functions which it is proposed that the new institution is to fill. Some have proposed that its primary functions be basic research on issues fundamental to national policy and the formulation of new proposals for policy. It is not clear to me why these functions cannot be better performed by institutions part of, or more closely affiliated with, the Executive Branch. Others have proposed that the new institution should stimulate and bring continuous pressure upon the Executive Branch so that it will develop more dynamic, more far-sighted, in any case "better", national policies. But the question of what are "better" national policies is exactly what is at issue.

If the proposal is to create an institution whose major function is to contribute to the building of a firmer and

deeper public concensus behind those policies that are finally decided upon and are to be executed by the responsible agencies of government, then perhaps there is more to be said in favor of making the attempt. It is hard, however, to see how the previously mentioned pitfalls are to be wholly avoided even if the institution's prime function is thus limited.

A fourth school of thought sees the major bottleneck to improved national policy planning as residing in what they allege to be the current dominance of the fiscal controllers over the effective policy making process. They see current N.S.C. policy papers as being of importance only as they give a peg to the Bureau of Budget and its minions to assert approved policy in support of their control over expenditures. Again there is much to be said in favor of this viewpoint. But what is to be done to improve the situation. At any level of fiscal expenditures there are bound to be competing demands for resources. Allocations have to be made and in peace time those allocations can generally be most conveniently controlled through the allocation of money. The largest expenditures are in the sphere of defense. Perhaps improvements can be made in defense organization to bring the subsidiary parts of that organization more into line with a logical division of the functions which the national strategy calls upon the defense organization to fulfill and thus to facilitate some decentralization of responsibilities and powers, including within limits, those of planning and fiscal control. But this is no easy or simple matter.

In my view it is erroneous to cut the Gordian Knot of the high cost of defense by a simple N.S.C. decision fixing an arbitrary five year ceiling on the aggregate of Defense Department requests for appropriations. But no matter what aggregate is finally decided upon, problems of fiscal allocation and fiscal control will remain.

A fifth school of thought sees the bottleneck to improved national policy planning in the failure of those in the highest positions of responsibility to resolve, or to resolve correctly, certain basic issues of policy which only they can resolve. Three crucial issues are usually sighted. 1. Is the scale of the effort we are making in support of our foreign policy and defense objectives adequate in the light of the threats which we face? Can we afford to put 10 or 12% of our national effort into support of our national objectives<u>viz a viz</u> the outside world when the Soviet Union

is putting two or three times as great a percentage of its resources into support of opposing objectives? 2. Are we justified in putting such heavy reliance for the military support of our foreign policy objectives upon nuclear armaments, the use of which would seem to controvert the very political purposes they are supposed to support? A crucial component of this question is the degree to which we should rely upon a capacity to initiate the use of nuclear weapons in limited wars to shore up our inadequate conventional military capabilities to support our objectives in such wars. 3. Are we devoting sufficient effort and resources to the non-military components of our national policy?

It is asserted that these questions are so basic that they do not lend themselves to staff work of the type usually implied when one speaks of policy planning. It is asserted that the President and his principal cabinet advisors have to express their judgment on these basic issues before policy planning in the usual sense can proceed. I would suggest that the principal task of national policy planning at the N.S.C. level, the level of the State Department Policy Planning Staff and of the Office of the Secretary of Defense and the Joint Chiefs of Staff is to provide the President and his principal cabinet officers with the data on which they can more intelligently come to a decision on just such basic questions of national strategy.

In sum, I see no easy and simple road to improving the quality of national policy planning. I believe much can and should be done. But that much involves doing a host of sensible but relatively minor things at a large number of significant and relevant points in a most complex process.

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NATO: The Dilemmas of a Peacetime Coalition

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1. The Military Core of the Alliance

The North Atlantic Treaty is unique among alliances in that it has come to embody an unprecedented degree of interdependence during peacetime. In military integration, strategic collaboration, and political and economic cooperation NATO has assumed tasks of multi-national decision-making and action that few wartime coalitions have performed. This degree of interdependence constitutes a great part of NATO's strength but also a great part of NATO's difficulties. Certain military and political developments have seriously aggravated these difficulties in the past decade. Combined with these developments, the prospect of several allies acquiring independent nuclear capabilities challenges the very basis of interdependence and calls for a reappraisal of its underlying assumptions.

This paper discusses the military strategic sources of NATO's difficulties. It assumes that NATO is pre-eminently a defensive military alliance and that it must be judged strong or impotent by the extent to which it gives assurance of advancing the security of its members. To be sure, some of its serious problems are in the political realm--especially where they involve political differences among the allies outside Europe, different approaches among the allies to the political issues in the center of Europe, and competition for power within the alliance. But NATO's most crucial difficulties, whether they take a political or a military form, originate in the impact of military strategic problems upon the core of mutual security interests, which is, after all, the main justification for the alliance.

NATO has come to be more than a military alliance. It is a center of coalition diplomacy vis-à-vis the Soviet bloc and a multilateral framework for inter-allied diplomacy. Psychologically and politically, it provides the underpinning of Western economic collaboration, even though most of this economic collaboration is not technically connected with the alliance. But if NATO's underlying core of mutual security interests loses its vitality, NATO's non-military roles will suffer correspondingly; and no extension of political consultation and economic cooperation within the organization will bring about its regeneration.

2. The Dynamics of Strategic Collaboration

The vitality of NATO's core of mutual security interests is a function, primarily, of allied collaboration in military strategy; but strategic collaboration is a complex political as well as military task.

By "military strategy" I mean the overall plan in accordance with which the alliance and its members utilize military resources to support security objectives. Logically, its components are the estimate of the nature of potential military threats and the kinds of contingencies in which armed force or the threat of armed force might have to be employed; the plans for responding to these contingencies with armed forces and the methods of publicly declaring such plans; the determination of the military

forces and capabilities required to support these plans; and the establishment of economic, material, and human contributions needed to support the forces and capabilities.

However, it is evident that neither national nor coalition strategy can reflect a purely strategic logic. National military strategy affects, and is therefore affected by, many pressing domestic political, economic, and institutional demands--especially where strategy impinges upon public expenditures, individual taxes, and the conscription of manpower. Coalition strategy adds to domestic non-military pressures the complications of foreign pressures, which spring from the requirement that a number of nations of various interests, foreign policies, and levels of power collaborate in a common plan. The extraordinarily speculative character of strategic calculations under present technological conditions--when nuclear weapons have not been tested on the battlefield, when the principal nuclear weapon tends to destroy the rational relationship between force and policy, and when security depends so largely upon the unpondérable psychological effect of deterrence--renders military strategy all the more responsive to domestic and foreign pressures, which impose obvious and immediate demands not directly related to strategic requirements.

Strategic collaboration within NATO is especially responsive to the political requirements of allied cohesion. Every viable defensive alliance must reconcile the requirements of external security with the requirements of internal cohesion. Since a number of allies, even under the pressure of war, seldom see the requirements of security in the same way, an alliance must permit concessions to the requirements of cohesion in order to enjoy the benefits of collective security--without, of course, undermining security in the process. This delicate military-political task is particularly significant in NATO, because NATO, unlike the simple bilateral guarantee pacts that are common in history, is a multilateral alliance that embodies a high degree of interdependence, which involves extensive commitments and contributions from its members.

One can appreciate the importance and complexity of NATO's internal requirements in the light of the dynamics of alliances in general. The purpose of a defensive military alliance is to provide its members with more security than they could obtain outside the alliance. For this purpose it requires from its members certain commitments (or obligations to participate in common decisions and actions) and may also require certain contributions of money, material, and manpower. These commitments and contributions involve liabilities--particularly, increased risks of involvement, reduced power of independent action, and economic, materiel, and manpower costs. In war, when the threat to allied security is visible and compelling, the incentive for collaboration may readily outweigh the liabilities; but in the absence of war, the liabilities of an alliance impinge more seriously upon allied cohesion. If the incentives do not outweigh the liabilities in the minds of the allies, the alliance will lack the cohesion to perform its security function effectively.

Therefore, if an ally believes that it derives a net advantage from the alliance, it must respect and cultivate the incentives needed to maintain sufficient cohesion. For this purpose it can make concessions, such as increasing its own commitments and contributions or agreeing to decreased commitments and contributions of its allies; or it can utilize sanctions, such as withdrawing or threatening to withdraw its commitments and contributions. Naturally, the task of maintaining incentives for collaboration falls largely upon the most powerful member of the alliance. In NATO that power has, obviously, been the United States.

As a general proposition, it can be stated that the higher the level of commitments and contributions an alliance requires, and the greater the number of allies, the more complex will be the task of reconciling the requirements of external security with internal cohesion. Thus a simple guarantee pact, which requires only limited commitments involving one member's obligation to come to the aid of another under a stated circumstance and which calls for no peacetime contributions, requires a lower order of collaboration than NATO, which, since the Korean War and the establishment of SHAPE in 1951, has operated at a high level of interdependence, marked by far-reaching mutual obligations, a high degree of military integration and political cooperation, and sizeable contributions of mutual assistance.

The decisive expression of collaboration in NATO is allied support of a common military strategy, which determines when, how, with what forces and weapons, and at what cost in men and money the alliance plans and prepares to respond to various military contingencies. Since it is largely through the medium of strategic collaboration that the external and internal requirements of the alliance must be reconciled, it is not surprising that NATO's military strategy contains contradictions and ambiguities that reflect the complexities of this task. It contains disparities between stated strategic objectives and actual capabilities, apparent contradictions between declaratory and operational strategy, and ambiguities in the declaratory pronouncements themselves.

From one standpoint these contradictions and ambiguities can be regarded as the necessary price of cohesion, since they enable the allies to live with intractable dilemmas and conflicting interests, which might disrupt collaboration entirely if they were subjected to the exacting demands of sheer strategic logic. On the other hand, these contradictions and ambiguities may jeopardize cohesion by depriving the alliance of clear incentives for collaboration; and they may jeopardize external security by concealing crucial strategic deficiencies and rendering them tolerable.

Apart from the contradictions and ambiguities in NATO strategy, the complexities of reconciling the external and internal requirements of the alliance through the medium of military strategy are reflected in significant doubts and apprehensions that revolve around four central, closely related strategic issues, which have arisen with radical developments in military technology and the distribution of military power: the deterrent effect of America's capacity for massive retaliation; the function of ground forces; the role of nuclear and conventional weapons; the dispersion of nuclear weapons among the allies. These issues strike at the core of mutual security interests that bind NATO together as a working defensive alliance; they challenge its viability from the standpoint of both external security and internal cohesion.

3. NATO as an Instrument of American Entanglement

In order to understand the way in which these strategic issues impinge upon NATO's core of mutual security interests one must first understand the chief substance of those mutual interests; in other words, the chief purpose of the alliance in the eyes of its members. Primarily, the North Atlantic allies are bound together by their identical interest in preventing the extension of Soviet control and influence in Europe. But why should they support this interest with an elaborate instrument of interdependence like NATO? Considering the extensive commitments and contributions that NATO demands, what are the persuasive security advantages it offers its members?

Two particular advantages have been attributed to collective military planning and action within the framework of the North Atlantic alliance: (a) by binding several nations to regard an attack upon one as an attack upon all it creates a more credible deterrent to aggression than if each nation had to depend upon its independent military capacity; (b) by combining the power of several nations and utilizing it more efficiently it creates a more effective defense against aggression.

However, since the United States has held the great preponderance of power within the North Atlantic alliance, both of these alleged advantages have depended largely upon the extent to which a multilateral alliance renders American power more effective as a deterrent and a defense against aggression than alternative bilateral or unilateral American commitments. From the beginning, the fundamental strength of the North Atlantic Treaty has been conceived to lie in the commitment of the United States to come to the defense of Europe. The founders of the Treaty, conscious of America's history of isolation, believed that a truly entangling multilateral alliance, embodying explicit, binding obligations, was essential in order to make this commitment convincing to the nations of western Europe as well as to the Soviet Union. Thus there was implicit in the alliance, at the outset, a major American concession to what were believed to be the demands of internal cohesion as well as external security.

It is precisely this basic rationale of interdependence that is now called into question by strategic issues that were not anticipated at the beginning. Although the firm and effective entanglement of the United States in the defense of Europe remains the chief substance of NATO's core of mutual security interests, the strategic conditions for preserving the entanglement have radically changed.

4. The Initial Phase

In the initial phase of the North Atlantic alliance, before the Korean War and the emergence of the Soviet Union as a major nuclear power, the alliance reflected an obviously satisfactory distribution of benefits between the United States and Europe at a relatively low level of contributions and interdependence for both. The Western European countries, economically enfeebled and politically unstable, discovered that they could not recover their strength and at the same time withstand the kind of Soviet pressure displayed in the Czechoslovakian coup and the Berlin blockade without American material help and the assurance of American military support in a showdown. The United States, sharing an identical interest in European recovery and security, guaranteed the defense of Europe through a multilateral alliance and extended military as well as economic assistance. In return, Europe agreed to strengthen its forces for the defense of Europe on the ground in accordance with a unified strategic plan. The United States backed up its guarantees, in effect, by extending the protective umbrella of the Strategic Air Command and the atomic bomb, of which it enjoyed a monopoly. In return, Europe provided the bases that were needed to enable SAC to strike effectively at the heart of Russia. Thus, despite a growing tendency in the United States toward the military conception of a strong combined force-in-being, the alliance was, in effect, a guarantee pact designed to make America's commitment to come to the defense of Europe convincing.

This guarantee pact made possible the mutually satisfactory bases of collaboration at the outset. From the standpoint of European incentives it contained only one significant liability: if America's atomic deterrent should fail and Russia should launch

an all-out assault upon Europe, Europe would be overrun and occupied before it could be liberated on the wings of American bombers. To counter this liability, American spokesmen repeatedly declared that the alliance would protect every member from Soviet occupation and not merely liberate them with air-atomic power; and they explicitly acknowledged that this assurance was the necessary condition for European collaboration.[1]

On the other hand, this declared strategic objective was not supported with actual capabilities, because NATO governments have never been willing to create and maintain the mobilized ground forces that would be required to prevent Russian occupation. Therefore, although the objective has been frequently reaffirmed, no NATO spokesman has ever been able to claim that it could be supported with existing forces. Indeed, the discrepancy between declaratory and operational strategy was obviously inherent in the strategic conditions that were openly recognized at the outset. The strategic conception for the "integrated defense of the North Atlantic area," which the North Atlantic Council endorsed in January, 1950, and which the military adopted, prescribed that "the hard core of the ground power in being" would come from Europe.[2] And yet, along the critical front from the Swiss Border and the mouth of the Elbe, the disparity between Russian and Western effective combat-ready divisions was on the order of 125 (including 25 Russian divisions on the forward line) to 14; and it was generally estimated that a Western force of from 35 to 70 divisions would be needed to defend this front. The European allies said that they were economically incapable of increasing their forces without American aid; but the American military assistance program, in accordance with the European insistance that economic recovery should be the "first prime necessity," proposed only to bring existing European forces up to strength.[3] One of its most effective advocates, Senator Vandenberg, strenuously denied any implication that the program was tied to a strategy of creating forces-in-being designed to defend Europe in a massive land war.[4] He regarded the alliance as a guarantee pact. At the same time, everyone acknowledged that a German contribution to the defense of Europe was excluded by political considerations.

By what strategic response were such limited allied ground forces expected to stop a Russian assault from running over Europe? The commonly-stated view was that a relatively small European holding force--some newspaper reports put the figure at 36 divisions by 1955--would keep the Russians at bay until the Strategic Air Command and ground forces brought up from reserve could come to the rescue. As the economic and financial implications of defense began to worry the Europeans and Congress began to consider the Mutual Defense Assistance Program of 1950, Secretary of Defense Johnson and some other government spokesmen added the suggestion that Europe could be defended without creating large standing armies by utilizing tactical atomic weapons, as well as new anti-tank and anti-aircraft weapons.[5] However, Secretary of State Acheson, while

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1. See statements by Secretary of State Acheson, President Truman, and General Bradley; Hearings, North Atlantic Treaty, Senate Committee on Foreign Relations, 81st Cong., 1st Sess., p. 44; Department of State Bulletin (hereafter cited as Bulletin), XX(May 22, 1949), 645; XXI(August 9, 1949), 186-88; New York Times, April 6, 1949, p. 3.

2. Testimony by General Bradley on July 29, 1949, Hearings, Mutual Defense Assistance Act of 1949, House Committee on Foreign Affairs, 81st Cong., 1st Sess., p. 71.

3. Hearings, North Atlantic Treaty, pp. 12-13, 22-24, 33.

4. Congressional Record, 81st Cong., 1st Sess., p. 8854; New York Times, Nov 23, 1949, p. 1.

5. Hearings, Mutual Defense Assistance Program of 1950, Senate Committee on Foreign Relations, 81st Cong., 2nd Sess., p. 22; Hearings, To Amend the Mutual Defense Assistance Act of 1949, 81st Cong., 2nd Sess., p. 27; New York Times, June 6, 1950, p. 3; ibid., June 8, 1950, p. 6.

endorsing the official view of the necessity and possibility of defending Europe against an all-out assault, preferred to reconcile European security with a tolerable level of military contributions by stressing a different function of allied ground forces: deterring limited aggression. Thus he told the House Foreign Affairs Committee in [illegible], 1949,

> We do not believe that to discourage military aggression it is necessary to create western European defensive forces which are by virtue of their size capable of successfully resisting an all-out attack. What is required is, rather, sufficient strength to make it impossible for an aggressor to achieve a quick and easy victory.[1]

This deterrent function of allied ground forces was, perhaps, a strategic response that could be reconciled with the level of economic and manpower contributions the allies might be willing to make; but, certainly, these contributions fell far short of meeting the objective of defending Europe if the deterrent should fail. Yet the resulting contradiction between NATO's declaratory strategy and operational capabilities failed to jeopardize the cohesion of the alliance, and probably promoted it, as long as the allies had confidence in two crucial strategic assumptions. One of these assumptions, based upon America's monopoly of the atomic bomb, was that the United States would retaliate against an attack upon Europe with its strategic airpower and that, therefore, America's capacity for massive retaliation would restrain Russia from pursuing its aims by direct military adventures. The other assumption was that, under the protection of America's air-atomic umbrella, Europe's major task was to build a situation of strength, based upon the priority of economic recovery over defense, in order to reduce its vulnerability to the most likely Soviet threat, namely, indirect aggression on the Czechoslovakian model.[2] But two developments combined to undermine confidence in these assumptions and challenge the adequacy of NATO's initial strategy: the emergence of the Soviet Union as a nuclear power and the outbreak of the Korean War.

5. The Impact of Soviet Nuclear Power

The growth of the Soviet capacity to strike at the United States and its forces with nuclear weapons has tended to undermine allied confidence in America's willingness to resort to massive retaliation in response to an attack upon Europe. Correspondingly, it has undermined confidence in the efficacy of America's capacity for massive retaliation as a deterrent against contingencies short of a direct attack upon the United States itself. At the same time, it has aroused fears that if the United States did resort to massive retaliation, this would lead to the obliteration of Europe. Therefore, to the extent that the European allies depend upon America's strategic deterrent for their security, they must fear that the United States may either leave them defenseless or drag them into a suicidal war. Both fears jeopardize the cohesion of the alliance by striking directly at the incentives for interdependence: the first, because it undermines confidence in America's connection with Europe; the second, because it increases the liabilities of Europe's connection with the United States.

The United States learned that Russia had ended her atomic monopoly as early as August, 1949. However, the growth of doubts and apprehensions about NATO's dependence upon America's capacity for massive retaliation has been a gradual development, which was aided its belief [illegible] from dramatic events like the American and Soviet

1. Bulletin, XXI (August 8, 1949), 193.

2. See the recollections of George F. Kennan in Russia, the Atom and the West, (N.Y.: Harper, 1957), pp. 85-91, and the contemporaneous impressions of Senator John Foster Dulles in the Congressional Record, 81st Cong., 1st Sess., p. 13006.

the monochrome explosions in 1949, the contamination of the Lucky Dragon crew from the Bikini test of 1954, and, most recently, the Soviet launching of space satellites. The implications of the growth of Soviet nuclear capacity for NATO strategy have appeared more gradually, but by 1959 they had gained notably in recognition in Allied governments.

What are these strategic implications? One disturbing implication that runs counter to an old axiom of NATO strategy is that there is no sense in trying to protect Europe against an all-out assault, since Europe would be obliterated in the resulting total nuclear war in any case. Although this implication is widely accepted in practice, the psychological and political disadvantages of acknowledging that NATO does not intend to protect every ally from the dreaded cycle of occupation and liberation has precluded its official acknowledgment.

Another distasteful implication is that, as Soviet nuclear power tends to neutralize America's nuclear advantage, and as the large Soviet ground forces exert correspondingly greater weight in the military balance, NATO needs considerably larger ground forces to offset new Soviet opportunities for accomplishing limited aggression--and "nuclear blackmail." The State Department Policy Planning Staff reached this conclusion soon after Russia's atomic explosion, and the conclusion was embodied in the National Security Council document NSC 68, as early as 1950; but its property restrictions have precluded the Government's action upon it, except during the Korean crisis.

Another strategic implication of the growth of Soviet nuclear power is that NATO forces need a capacity for intermediate responses against limited aggression in order to have the alliance free flexibly to choose between total war and yielding acquiescence. NATO publicly adopted this conclusion in 1956, but it is questionable whether the conclusion has been translated into military capabilities.

One implication that has been carried out in practice is that the growth of Soviet nuclear power persuaded the United States to offset the declining credibility of her commitment to defend Europe by providing a visible hostage of her intentions. The six American divisions in the Continent serve this purpose, although they also make a contribution for somewhat different reasons.

Perhaps the most important implication of all, which had raised issues with the advance and dispersion of nuclear technology, is that has Europe's ability to rely on strategic nuclear capabilities to compensate for the declining weight of reliance upon the United States' capability.

These strategic implications, though speculative and debatable, are plausible conclusions, and fall in the growth of Soviet nuclear power has substantially altered the basis upon which military men reasoned when the original NATO strategy was established. Developments in military technology, and a variety of domestic and foreign pressures not directly connected with Soviet nuclear power, have also affected NATO strategy. But a more flexible NATO strategy, with the original assumptions of NATO strategy, and the emergence of the Soviet Union as a nuclear power. The significance of this does remain.

6. The Impact of the Korean War

On the eve of the Korean War the North Atlantic powers were scarcely better prepared to resist aggression than when the alliance had been formed. The invasion by North Korea precipitated the first and last serious effort to create the kind of forces-in-being that might support a "forward strategy" capable of preventing Soviet troops from overrunning Europe.[1]

This effort reflected a radical change in allied estimates of the Russian threat. The North Korean attack seemed to discredit the prevailing assumption that America's massive retaliatory capacity would deter the Russians from undertaking direct military adventures. "The attack upon Korea," President Truman announced, "makes it plain beyond all doubt that communism has passed beyond the use of subversion to conquer independent nations and will use armed invasion and war."[2] In retrospect, one must doubt the wisdom of interpreting a satellite attack upon a peripheral strategic position, which the United States had excluded from her "defensive perimeter" and from which she had withdrawn her troops, as indicating an imminent Russian attack on Western Europe. But in the absence of any sure objective test of a potential aggressor's intentions, estimates are bound to reflect hopeful assumptions in times of relatively low tension and pessimistic assumptions during overt crises, depending upon the margin of safety governments may tolerate in adjusting defense policies to competing domestic pressures.

In accordance with this revised estimate of the Russian threat, the United States undertook a "crash" rearmament program and urged its allies to do likewise. President Truman proclaimed that "the key element in the defense of Europe is the ability to hold on the ground."[3] Secretary of State Acheson echoed military opinion in declaring that defense policies should be based on Soviet capabilities rather than upon what one might surmise about Soviet intentions; and by this measurement, he said, "it is evident that a forced draft on a very large scale is required" in order to translate the potential strength of the free nations into defense-in-being with the greatest speed.[4] Accordingly, the original priority of economic recovery over a military buildup in Europe was reversed. This severely tested the prevailing assumption that Europe could attain an adequate level of preparedness without sacrificing economic progress and standards of living. It was a significant blow to the original balance of benefits and liabilities within allied strategy.

This blow was followed by a major political alteration in the alliance when the United States decided to seek a West German contribution to NATO, although the American decision was a logical means of supporting the existing strategy, considering the importance of Germany's potential troops and her forward geographical position. Moreover,

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1. The North Atlantic Council, meeting in New York on September 15, 1950, agreed to adopt a "forward strategy" that would resist aggression as far eastward as possible. Lord Ismay, NATO: The First Five Years, 1949-1954 (Paris, 1954), p. 32. SHAPE planners developed the forward strategy after the Headquarters was established in 1951.

2. Statement on June 27, 1950, Bulletin, XXIII(July 3, 1950), 5.

3. New York Times, May 25, 1951, p. 4.

4. Testimony on August 30, 1950, asking for additional Mutual Defense Assistance Program appropriations, the largest portion of which was intended for NATO countries. Bulletin, XXIII(September 11, 1950), 437.

in July, 1951, the United States became the champion of the most radical proposal of interdependence that the alliance has ever seriously considered when General Eisenhower, acting in his newly-created capacity as Supreme Allied Commander, endorsed an integrated European army as the vehicle for making a German contribution politically acceptable. With American pressure, the six European members of NATO subsequently agreed to the integration of twelve German divisions within a European Defense Community. However, the failure of France to ratify this agreement postponed Germany's membership in NATO until October, 1954, under the less radical but no less unprecedented military integration embodied in the Paris Agreements.

To stimulate the rearmament of Europe, the United States was prepared to make concessions as well as to apply pressure. Thus she promised to increase the number of her continental divisions from two to about six, primarily as a token of her firm commitment as as a morale-booster, intended to encourage the European allies to rearm themselves.

In view of these radical increases in allied military contributions that were now considered essential, it is significant that the strategic function that allied forces were supposed to perform remained the same. Secretary Acheson, explaining allied strategy to Congress, again emphasized the deterrent function of ground forces against minor attacks. However, he also continued to justify ground forces in terms of preventing Europe, in the event of an attack, "from having to go through another occupation and liberation";[1] and American military testimony confirmed this as an essential and feasible goal.

7. The Shortfall in NATO's Shield

The effort to build up allied ground forces reached its apparent zenith at Lisbon in February, 1952, when the NATO Council accepted the European Defense Community as the best means of securing a German defense contribution and fixed a goal of 50 divisions (about half of which would constitute a readily mobilized reserve) by the end of 1952 and a provisional goal of 96 divisions by the "year of maximum danger" in 1954.[2] (Neither goal included Greek and Turkish troops.) Official statements indicated that the strategic function of these projected forces remained unchanged.[3]

However, if it was not evident before the Lisbon conference that NATO was unwilling to rearm on a major scale, it soon became evident afterward, as all NATO governments,

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1. Hearings, Assignment of Ground Forces of the United States to Duty in the European Area, Senate Committees on Foreign Relations and Armed Services, 82nd Cong., 1st Sess., pp. 79, 80, 106-7.

2. The concept of the "year of maximum danger" was based upon a calculation of the time by which Russia would acquire sufficient atomic capacity to be in a position to utilize the numerical superiority in mobilized manpower for exerting intensive political or even military pressure--a concept that went back to NSC 68. See General Bradley's and General Vandenberg's explanation in Hearings, Department of Defense Appropriations for 1953, Senate Committee on Appropriations, 82nd Cong., 2nd Sess., pp. 332-34, 385.

3. See General Gruenther's statement in Hearings, Mutual Security Act of 1951, Senate Committee on Foreign Relations, 82nd Congress, 2nd Sess., p. 218; also, General Eisenhower's statement as Supreme Allied Commander in Europe, First Annual Report (Paris: SHAPE, 1952), p. 27.

with Great Britain in the forefront, began to relax their defense efforts, pointing to the economic dislocations caused by rearmament, abandoning the year-of-maximum-danger concept in favor of the "long pull," undertaking economic retrenchment, stretching out force goals into the future, and reducing manpower or shortening the terms of conscription. Only a perpetuation of the fears of imminent danger aroused by the North Korean attack could have provided sufficient incentive for the allies to have made anything like the level of contributions agreed to at the Lisbon conference. But with the stalemate in Korea and the beginning of truce talks in July, 1951, allied governments, notwithstanding official NATO insistence that the Soviet threat had not diminished, returned to their original low estimate of the likelihood of Soviet or satellite military attacks on Europe.[1] Insofar as the military threat to Europe was proclaimed, the United States--and especially its military leaders--carried the burden of the argument. Although allied governments continued anxiously to seek America's reaffirmations of her determination to protect Europe at the Elbe, they were far more concerned with internal economic and political problems--or, as in the case of French involvements in Indochina and Algeria, with their own security problems outside Europe--than with an hypothetical assault upon Europe. The death of Stalin and Russia's concentration upon a tactic of "peaceful coexistence" in Europe made the likelihood of such an assault seem even more remote and gave credence to the supposition that the main thrust of communist power had shifted to the non-military realm and to areas outside Europe.

Moreover, it seemed that NATO might virtually have achieved a force that was sufficient to deter the only kind of direct aggression that European governments took seriously. By 1954 NATO's western European forces became stabilized at about 25 nominally combat-ready divisions (before France withdrew four divisions in 1956 to fight in Algeria and Great Britain withdrew 2½ divisions after her defense revision in 1957), backed by about the same number of understrength reserve divisions. Although this force was incapable of defending Europe against a major Russian assault, as successive Supreme Commanders conceded, it did seem adequate to deter the kind of quick, limited aggression that Acheson had envisaged.

In these circumstances, a difference between the dominant European and American conceptions of the alliance, which had existed almost from the beginning, became more apparent. From the American standpoint NATO was an instrument for building an integrated military force-in-being that would redress the military balance with Russia; but from the standpoint of her European allies the alliance remained, primarily, a means of firmly committing the United States to their defense, while their military contributions were intended more to preserve the American commitment than to provide for the common defense.

Only extraordinary American concessions or sanctions, such as a massive increase in economic aid or the threat of withdrawing troops, might have induced the European allies to subordinate their domestic economic and social goals to the stated requirements of defense. America's continuation of economic and military assistance may be considered a necessary concession to allied military collaboration. And Secretary Dulles's suggestion of an "agonizing reappraisal" of American policy if France failed to ratify the EDC treaty was certainly intended as a sanction (although European fears of Congressional disfavor seem to have had more discernible effect). But the United States never considered resorting to more drastic incentives.

1. See, for example, statements by Prime Minister Churchill on December 6, 1951, Parl. Deb. (H.C.), vol. 494, p. 2592, and by the forthcoming Secretary of State, Dulles, on February 16, 1952, in the Congressional Record, 82nd Cong., 2nd Sess., pp. 1830-02, later repeated in office in a statement to the North Atlantic Council, New York Times, December 16, 1955, p. 1, and in Congressional testimony in May, 1956, Hearings, Mutual Security Appropriations for 1957, Subcommittee of the House Committee on Appropriations, 84th Cong., 2nd Sess., pp. 4, 5, 13.

Furthermore, in its own defense policies the American government did not set an example that was calculated to inspire European defense efforts. Despite her greater stress upon NATO as an integrated military force, the United States, still regarding the defense of Europe on the ground as primarily a European responsibility, was no more inclined than her relatively hard-pressed allies to support the common defense at the sacrifice of her domestic standard of living. On the contrary, her own defense policies provided a persuasive example of the strategic formula for economic retrenchment. The new Republican administration promised to provide maximum security at minimum cost by reverting to the pre-Korean strategy of an overwhelming reliance upon the deterrent effect of America's capacity for massive retaliation. This formula was to prove increasingly popular in allied governments as the prospect of substituting nuclear firepower for manpower gleamed brighter. It received dramatic endorsement in 1957 when the British government, following a trend clearly foreshadowed in 1955, when Churchill had declared Britain's decision to acquire an independent nuclear retaliatory capacity, announced that it had decided, in response to economic imperatives, "to revise not merely the size, but the whole character of the defense plan" by depending primarily upon its own as well as the United States' strategic deterrent and cutting back the British Army of the Rhine.[1]

The net result of these military and political developments was that NATO remained overwhelmingly dependent upon the deterrent effect of America's capacity for massive retaliation as the rapid growth of Soviet nuclear power undermined the credibility of America's commitment to defend Europe. While the growth of Soviet nuclear power began to impress upon the allies the liabilities of a monistic strategy, the trend of military capabilities ran directly contrary to strategic pluralism.

In effect, the failure of the allies to create a larger and more diversified capacity for ground resistance left NATO forces in the position of a "trip-wire" against anything but the most limited military threat. That is, insofar as NATO forces were incapable of withstanding military assaults, they would serve chiefly as the device for touching off massive retaliation. In the aftermath of the Lisbon conference this "trip-wire" or "plate-glass" conception gained unofficial favor, but its obvious defect from the standpoint of eliciting European collaboration precluded its official adoption and, in fact, required its repeated repudiation.

As the prospect of NATO's achieving an enlarged forward "shield" grew more remote, the burden upon the existing forces as a symbol and assurance of European-American interdependence became more evident. Increasingly, the European allies regarded their contributions to these forces as primarily a concession to American collaboration, while the United States acknowledged the enhanced psychological significance of her contribution as a hostage to her NATO obligations. Thus the chief purpose of America's five continental divisions continued to be the maintenance of allied cohesion, but their specific function changed from starting a spiral of confidence that would lead Europe to build its own defenses to reversing a spiral of declining confidence by reassuring Europe that the United States would not abandon Europe and withdraw to Fortress America.

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1. Statement on Defense, 1957; see also, Statement on Defense, 1955 and Churchill's speech to the House of Commons on March 1, 1955, in Parl.Deb(H.C.), vol 537, pp. 1894-1905.

8. The Impact of Tactical Nuclear Weapons

By 1954 the growth of Russia's air-nuclear capacity had caused significant apprehensions in the United States concerning a strategic contradiction--the discrepancy between NATO's declaratory strategy of defending every member on the ground and NATO's actual military capabilities--which had been a perfectly satisfactory price of collaboration to everyone at the outset. Confronted with this discrepancy, American and NATO spokesmen reaffirmed that the defense of Europe without the devastation or occupation of any ally was an indispensible objective;[1] but now, under American leadership, NATO embraced tactical nuclear weapons as the means of supporting this objective at a level of economic and manpower contributions the allies were willing to pay. However, contrary to original hopes, this strategic expedient has only compounded the problem of reconciling NATO's external and internal requirements by increasing NATO's dependence upon a nuclear response.

In the spring and summer of 1954 SHAPE military planners, echoing a decision already reached in American defense policies, announced that a SHAPE study showed that it was both necessary and feasible for NATO to base its strategy on the use of tactical nuclear weapons in order to redress the imbalance between Soviet and Western forces and defend Europe against an all-out attack.[2] Field Marshal Montgomery declared that NATO had reached "the point of no return as regards the use of atomic and thermo-nuclear weapons in a hot war."[3] Subsequently, the North Atlantic Council agreed that NATO should plan on using nuclear weapons against conventional attacks; and, on this basis, it reduced the ground forces target from fifty to thirty divisions. Secretary of State Dulles hailed this decision as for the first time providing the means of supporting a forward strategy that could protect western Europe from invasion and throw the aggressor back "at the threshold."[4]

However, since 1954, tactical nuclear weapons have not lived up to their original promise as a solution to NATO's strategic problems. There is no assurance that the relatively small NATO forces using tactical nuclear weapons could protect Europe from Soviet forces using tactical nuclear weapons or that there would be anything left of European civilization if they tried. There is less confidence than before that tactical nuclear weapons permit significant economies in mobilized manpower; indeed, the United States Army has concluded that nuclear warfare will require more manpower than conventional warfare.[5] Certainly, the development and production of these weapons have been anything but economical in monetary terms. They have, in fact, been so expensive as to create considerable military concern that concentration upon nuclear armament has virtually deprived NATO forces of an effective conventional capability.

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1. See, for example, statements by President Eisenhower and Supreme Allied Commander General Norstad. Bulletin, XXX(April 26, 1954), 619; XXXVI(February 18, 1957), 254.

2. New York Times, April 25, 1954, p. 27; January 8, 1954, p. 2; July 25, 1954, p. 1; August 14, 1954, p. 3; Bulletin, XXXI(October 18, 1954), 562-66.

3. Journal of the Royal United Service Institute, XCIX(November, 1954), 507-23.

4. New York Times, December 22, 1954, p. 4.

5. New York Times, March 14, 1958, p. 1; October 27, 1958, p. 1.

NATO's growing dependence upon a nuclear response, in turn, threatens to jeopardize the cohesion of the alliance--especially when the United States retains exclusive control of the nuclear warheads. For even if a nuclear war could be limited from the American and Russian standpoint--a thesis which has won no acceptance among allied or NATO officials--it threatens to be a total disaster for the allies in the battle zone.

These second thoughts about tactical nuclear weapons have led NATO to emphasize their utility as a deterrent rather than a defense against aggression. But, at the same time, the growing consciousness of the penalties of nuclear war has depreciated the credibility of a tactical nuclear response in Western eyes and, one may speculate, in Soviet eyes also. Of course, this depreciation has been expressed more openly in discussions and independent publications than in official statements. Nevertheless, the British government has already gone quite far in explicitly qualifying the threat of a nuclear response. It has acknowledged that neither strategic nor tactical nuclear weapons would necessarily be used against conventional aggressions in Europe that were not "major, full-scale attacks," although it has refused to define the contingencies between a major attack and a small border incident in which nuclear or conventional weapons might be used, lest this invite piecemeal conventional aggression.[1] In 1959 the American government still professed to rely as heavily as ever upon the threat of nuclear retaliation to deter a conventional attack in Europe, while it recognized no distinction between a limited and an all-out nuclear war.[2] However, Secretary of State Herter probably reflected official thinking when he told a Congressional committee on April 21, 1959, that the West would not be justified in conducting a nuclear war in the initial stages of a Russian attack before making sure that the Russians were carrying it to the point of an all-out war, and that the President would not involve the United States in an all-out nuclear war "unless the facts showed that we were in danger of devastation ourselves."[3]

Thus, although tactical nuclear weapons may well be a perfectly effective supplement to strategic nuclear weapons as a deterrent against less-than-total aggressions in Europe, they have not relieved the alliance of the doubts and apprehensions that spring from NATO's dependence upon an admittedly suicidal response, the credibility of which Western spokesmen themselves have called into question. Consequently, there has been increasing sentiment for remedying or, at least, ameliorating this predicament by enlarging and diversifying the capabilities of NATO's shield.

9. The Shield Re-emphasized and Reformulated

The Supreme Allied Commander General Norstad has made the most complete official statement of the case for NATO's shield. In appealing for forward ground forces of

1. Parl. Deb.(H.C.), vol. 537(1955), pp. 2182-83; vol. 549(1956), p. 1035; vol. 564(1957), pp. 1765, 1766; vol. 583(1958), pp. 395, 410. It is significant that in 1958 even Field Marshal Montgomery was stating, albeit in retirement, that when both sides achieved "nuclear sufficiency" in due course, the West would not commit suicide by using its nuclear deterrent against a minor Russian aggression with conventional forces. Journal of the Royal United Service Institute, CIII(November 1958), 468-87.

2. See President Eisenhower's statement on March 11, 1959, that the West would not fight a ground war in Europe but might have to fight a nuclear war, even though it would be "self-defeating." New York Times, March 12, 1959, p. 12.

3. Ibid., April 21, 1959, p. 1.

thirty divisions, he has set forth three functions of the shield.[1] Two of these functions have been recognized in official statements from the beginning, although the second is now assigned a higher priority: (a) to protect all NATO territory against major aggression by holding an attack until the total weight of retaliatory power can be brought to bear; (b) to deter a border incident or a limited probing action by making it clear to the potential aggressor that "he would have to use substantial force to breach the shield, an act he knows would bring down upon him the full weight of the deterrent, including our heavy strategic power." However, the third function is expressed in a strategic formulation more specifically designed to meet the requirements of external security and internal cohesion in the face of Russia's emergence as a full-fledged nuclear power. The shield, General Norstad has said, must provide new military and political flexibility, and it must relieve the allies of having to choose between total war and passive acquiescence, by enabling NATO to respond to "less than ultimate incidents with something other than massive retaliation"--with "some intermediate means."

Yet General Norstad has stopped far short of extending this third function to its full logic; for, like spokesmen of American defense policies, he has pointedly denied that a limited war is possible in the NATO area, and he has emphasized that the shield forces "can no longer be considered as 'conventional forces,'" although they retain a "residual conventional capacity." Apparently, he envisages military and political flexibility chiefly in terms of NATO's ability to hold a limited probing action--by conventional means, if possible--long enough to force the aggressor to weigh the costs of a major war and to give both sides a chance for reappraisal and negotiation.

Thus, on the one hand, the Supreme Commander has recognized that NATO's dependence on America's threat of massive retaliation has become too dangerous from the standpoint of allied security and cohesion. But, on the other hand, he has conceded that, as a supplement to massive retaliation, NATO is compelled by the minimum number of troops it is willing to raise and support to rely primarily upon the deterrent effect of a nuclear ground force which is designed only to hold an attack until the full weight of retaliatory power is brought to bear. In order to relieve NATO of the choice between obliteration and occupation that remains implicit in this reformulation of what is essentially a deterrent strategy of massive retaliation, he recognizes the importance of an alternative intermediate response; but, lest he diminish the deterrent value of the nuclear forces upon which NATO primarily depends, he denies the possibility of a limited war or of a conventional response beyond a brief holding action.

It is doubtful that this strategy has succeeded in satisfying the conflicting demands for increased deterrence at less risk, as well as defense against limited and major aggressions if deterrence fails--all at no greater cost in money and men. No strategy can. But, perhaps, General Norstad's is the wisest strategic formula, given the limited contributions that NATO can expect to receive from its members. If Germany fulfilled its force-level of twelve divisions, if France returned her four divisions in Algeria, and if Great Britain restored the two it withdrew, NATO might finally have about the thirty divisions, that General Norstad has called a minimum, instead of the present sixteen-or-so combat-ready divisions, which leave NATO's shield at a dangerous disparity of about four to one compared to the Soviet-and-satellite forward line.

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1. New York Times, June 25, 1956, p. 22; Bulletin, XXXVI (February 18, 1957), 251-55; XXXVII (December 16, 1957), 952-55; "The Sword and the Shield of NATO," Army, VIII (December, 1957), 44-47; Hearings, Mutual Security Act of 1958, Senate Committee on Foreign Relations, 85th Cong., 2nd Sess., pp. 135 ff.; Hearings, Mutual Security Appropriations for 1959, Subcommittee of the House Committee on Appropriations, 85th Cong., 2nd Sess., pp. 564-65. Hearings, Mutual Security Act of 1959, House Committee on Foreign Affairs, 86th Cong., 1st Sess., pp. 445-47, 466.

Still one must doubt that the balance of incentives over liabilities contained in Norstad's formula is sufficient to obtain even this minimum ground force. A marginal increase in security against hypothetical and improbable limited aggressions in Europe, which would be extremely difficult to resist on a limited basis or to confine to tolerable levels of local destruction, does not seem to be a sufficient inducement for the allies to make the sacrifices in money and manpower that are needed to support indefinitely a truly dual-capability force of thirty divisions. The fact remains that, while Russia's growing nuclear capacity had undermined confidence in the reliability and efficacy of America's capacity for massive retaliation to deter anything less than a direct attack upon the United States, NATO has not developed a convincing strategy for defending its members against either limited or major aggressions, without obliterating them, at a cost they are willing to pay. And it is unlikely that any politically feasible strategy can alter this dilemma.

General Norstad's formulation of NATO strategy recognizes that, militarily and psychologically, America's participation in the defense of Europe has become more important than ever, with the growth of Soviet nuclear power. But the strategic conditions for maintaining that inter-dependence have grown vastly more complicated, with the enlarged significance of NATO's forward shield. If Western Europe were so strong and so integrated as to be capable of performing the functions of both NATO's sword and shield by itself, there might be no need for American-European strategic interdependence; and NATO could then be superseded. But this does not seem to be a practical prospect--politically, economically, or militarily--in the forseeable future.

10. Nuclear Diffusion

Faced with the perplexities of resolving conflicting and contradictory demands within a common military strategy requiring an unprecedented level of peacetime contributions and interdependence, it is not surprising that NATO strategy no longer represents the simple, compelling core of mutual security interests that it embodied at the outset. Consequently, some allies are increasingly receptive to political and military courses that promise to enhance their security by more direct means than strategic collaboration in NATO. Two courses are particularly attractive: (a) political agreements with the Soviet Union, leading to various schemes of military disengagement and (b) acquisition of independent nuclear capabilities. Neither course is, *per se*, an alternative to NATO; but both have crucial implications for NATO strategy, which impinge upon the very basis of allied interdependence.

In order to appraise the possible effects of the diffusion of nuclear--and especially strategic nuclear--capabilities upon the alliance one must first understand the reasons that may lead other allies to follow Great Britain's course in escaping exclusive reliance upon America's nuclear power. The decisive incentives would seem to be the following: (a) to obtain a more effective deterrent to military threats against which the United States cannot be relied upon to respond with its own nuclear power; (b) to gain greater protection against "nuclear blackmail"--that is, against various forms of Soviet political pressure backed by the threat of Soviet nuclear power; (c) to facilitate the pursuit of political positions that the United States is not willing to support at the risk of nuclear war; (d) to achieve greater bargaining power vis-à-vis the United States and other allies in diplomatic undertakings; (e) to enhance the general prestige and status of the nation; (f) to rationalize economies in other military expenditures and in mobilized manpower by offering the public more security at a tolerable cost. These incentives have little basis in strategic logic; yet they will probably prove compelling.

Are there circumstances in which a NATO power's threat to use strategic or tactical nuclear weapons would be more credible to the Soviet Union than America's threat to use them? One cannot know how the Soviet Union estimates such threats; but if her estimates accurately reflect the calculations of the deterring ally, an ally will enhance its deterrent power only under circumstances in which it would be more willing than the United States to use that power, providing that it can convince the Soviet Union that the risks of unacceptable costs are intolerable. By this criterion it is not plausible that an independent nuclear capability would enhance an ally's deterrent power against any military threats in Europe, except, perhaps, those that an ally would regard as virtually total and the United States would regard as limited. But although in this hypothetical contingency an ally with only a rudimentary nuclear capability might be able to impose unacceptable costs upon the Soviet Union--especially if its response promised to involve the United States in the war--one must place such theoretical speculations in the context of actual national psychology. In terms of the realities of national psychology there would seem to be few, if any, kinds of aggression in Europe in which any ally would be more willing to incur the penalties of initiating strategic, let alone tactical, nuclear warfare than the United States; and it is even more improbable that the Soviet Union would take the risk of basing an aggression upon this tenuous expectation. For, rightly or wrongly, the United States feels less vulnerable to nuclear devastation than her European allies, and she is by now firmly committed to a conception of national interest that regards the containment of aggression upon Western Europe as of comparable importance to the protection of the Western Hemisphere. As for an ally's deterring or opposing military threats outside the NATO area, it might derive somewhat more advantage from an independent nuclear capability, since it might be more willing than the United States to incur the comparatively lower risks of total nuclear war to support the political objectives at stake. But in this case, the advantage would be outweighed by the adverse political and, ultimately, military consequences of initiating the use of nuclear weapons under circumstances in which the United States would not protect an ally against Soviet pressure or military action.

If an ally will gain little, if any, additional deterrence by controlling its own nuclear capacity, it is not likely to gain any significant political leverage either. Nor is there any reason to suppose that it would gain any real bargaining power vis-à-vis the United States, except in acquiring more American nuclear information and weapons; for an ally does not become more valuable to the United States simply by possessing its own nuclear capability.

However, in making strategic calculations about such a crucial yet speculative matter as the efficacy of nuclear weapons as instruments of deterrence and diplomacy, governments naturally want to play safe by relying, as far as possible, on their own nuclear weapons rather than on the will and ability of others to use them in their behalf. Thus, allied governments understandably discount the reliability of America's nuclear deterrent and look forward to relieving themselves of exclusive dependence upon it. In Great Britain and France this consideration, combined with more general considerations of domestic policy and national prestige, are already demonstrably persuasive incentives for the acquisition of independent nuclear capabilities. Furthermore, now that the United States, in response to Soviet ICBM progress, is anxious to disperse IRBM's and their warheads (as well as tactical nuclear weapons and nuclear stockpiles) on allied territory, the allies who permit this dispersion are bound to grow restive under an arrangement that renders them more vulnerable while Americans retain control of the nuclear warheads and stockpiles. Finally, the power of example and the desire not to be left out of an expanding nuclear club are likely to prove decisive. When France joins Great Britain in the club, Germany will not be far behind.

To be sure, these incentives for acquiring an independent nuclear capability must be weighed against certain disincentives: particularly, the expense or technical difficulty of developing such a capability, American laws against the dissemination of atomic information and devices, the fear of increased vulnerability, and popular aversion to nuclear weapons. The first factor, alone, may confine the achievement of anything beyond a few "nominal" atomic bombs to France and Western Germany within the next ten years.[1] But this will be sufficient to raise some serious questions for the future of NATO.

The internal political effects within the alliance of the tendency toward nuclear diffusion may be of more immediate importance than the military effects. On the one hand, given the incentives for diffusion, the failure of the United States to facilitate this process may, as Secretary of State Dulles argued, drive allies toward neutralism without stopping diffusion in the end anyway.[2] Therefore, one might argue that sharing the control of nuclear weapons among allies may preserve the cohesion of NATO and even promote it by giving allies a greater sense of security, participation, and responsibility. On the other hand, nuclear diffusion may have just the opposite effect. For to the extent that one ally regards its nuclear capacity as a means of acting independently of other allies, the other allies will be less inclined to take military risks in its behalf. This could lead each ally to concentrate upon building its own nuclear capability, at the expense of contributing to the common shield. To the extent that all allies thereby came to depend for their security primarily upon their own willingness to commit nuclear suicide, each would become more reluctant to use any kind of military force except in response to aggressions that impinged directly and immediately upon its own survival; and each would concentrate upon pursuing exclusively national interests outside the alliance. By this course the mutual obligations of the alliance could soon wither away.

The corrosive impact of nuclear diffusion upon the interdependence of the United States and her European allies could be especially serious. The diffusion of nuclear capabilities will increase American suspicion, if not the actual likelihood, of some ally committing, or threatening to commit, the United States to nuclear war under circumstances in which the United States would not be willing to bear the costs and risks of nuclear war. Indeed, considering the limited nuclear capabilities that allies are likely to achieve in the next decade or so, the ability to commit American nuclear power may appear to be the chief utility of independent nuclear capabilities. This situation could induce the United States to do exactly what her allies have always feared: to qualify or repudiate her obligations to come to the defense of Europe. And the United States will be in a better position to do this when she acquires a quantity of operational sea-launched missiles and ICBM's that free her from dependence upon European bases.

Thus both nuclear diffusion and the absence of nuclear diffusion pose a serious threat to allied cohesion. One logical solution for this dilemma is joint control of nuclear weapons, a solution which would be especially desirable if strategic weapons were based on territories outside allied homelands and on the sea. However, any arrangements for joint control that could operate effectively---unlike the present arrangement, whereby the United States controls the nuclear warheads while the host country mans the bases but only exercises a veto over the decision to use the missiles---

1. Klaus Knorr, "Nuclear Weapons: 'Haves' and 'Have-Nots,'" Foreign Affairs, XXXVI (October, 1957), 167-69.

2. Hearings, Amending the Atomic Energy Act of 1954, Subcommittee on Agreements for Cooperation, Joint Committee on Atomic Energy, 85th Cong., 2nd Sess., pp. 156, 446 ff., 525-27.

would involve a degree of interdependence that no nation seems willing to accept.[1] for effective joint control of nuclear weapons implies joint acceptance of a quick supranational decision by some central unit as to the circumstances in which the allies will collectively assume the risks of suicide; and, except perhaps in the case of an all-out Russian assault, this implies an extraordinary coincidence of allied interests and policies.

Theoretically, the problem of nuclear diffusion might be solved by an intermediate arrangement--something between NATO-wide joint control and independent nuclear capabilities--such as an integrated European nuclear community.[2] But such a nuclear community, while failing to mitigate the corrosive impact of nuclear diffusion upon American-European interdependence, would seem to be based on no firmer political grounds for genuine nuclear integration than the wider framework of NATO. Moreover, it would exacerbate the divisive effects of a nuclear-armed Germany, which would dominate the community.

Nevertheless, there is an outside chance that the military logic of operating missiles effectively, the expense of nuclear duplication, and the mutual interest of all allies in limiting the multiplication of independent nuclear capabilities might lead to the organization of an effective centralized system of NATO control and ownership of nuclear weapons, while, at the same time, the major allies retained sufficient independent nuclear capabilities to serve national interests that they were unwilling to make a collective responsibility. Of course, the precondition for this arrangement would be America's delegation to NATO of a significant part of her air-nuclear capability; but it is not inconceivable that, at some point, this delegation would seem like a reasonable price for allied cohesion.

But whether effective joint control is feasible or not, America's facilitation of nuclear diffusion under some kind of arrangement is likely to be the necessary price for maintaining allied contributions to NATO's forward shield, which will otherwise suffer from the competing economic demands attending the development of independent nuclear capabilities. And the maintenance of the shield, in turn, will be an increasingly important element of cohesion as nuclear diffusion takes place. For only insofar as NATO has a strategy that provides its members with other options besides total war and ineffective resistance will they have sufficient incentive for relying on NATO rather than on their own nuclear power.

11. Disengagement

The best strategy is not likely to satisfy NATO's external and internal requirements completely. At best, nuclear diffusion will have a disruptive influence upon Western unity. Therefore, the appeal of disengagement is enhanced as a means of ameliorating military and political problems that threaten to grow worse under existing trends. But whatever might be the ultimate effects of disengagement in reducing the risks of nuclear war, halting the trend toward nuclear diffusion, or promoting political

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1. Under the Anglo-American agreement, signed on February 22, 1958, the British own and operate the missiles the United States places on British territory, the United States owns their nuclear warheads, and the decision to launch the missiles is joint. Bulletin, XXXVIII(March 17, 1958), 418-19. However, the agreement that the United States negotiated with Italy in March, 1959, was reported to provide that the decision to launch the missiles placed on Italian territory would require the approval of the Supreme Allied Commander in Europe as well as of both governments. Manchester Guardian, March 31, 1959. The United States has failed to obtain France's agreement to a similar scheme.

2. This proposal is argued in Ben T. Moore, NATO and the Future of Europe (N.Y.: Harper, 1958)

stability we must weigh these speculative advantages against the immeidate strategic consequences of disengagement. The consequences of any scheme that Russia might conceivably accept would include (a) the withdrawal of Western Germany from NATO, (b) a reduction of the military effectiveness of the West's forward line in deterring and resisting limited military threats by means short of total war,[1] and (c) a withdrawal of American troops from the forward line or, probably, from the continent. These three consequences would be directly contrary to the strategic requirements which, according to the foregoing analysis, are essential to NATO's external security and internal cohesion under the conditions created by the growth of Russia's nuclear power and the prospect of nuclear diffusion. In effect, they would transmute NATO into its original form of a multilateral framework for extending America's guarantee to come to the aid of Europe with her air-nuclear power. But this transmuted NATO would operate under radically different conditions from those in the initial phase of the alliance.

George Kennan, in presenting his proposal for disengagement, appealed for a return to the limited conception of the organization of Western security that he held at the beginning of the alliance.

> We must get over this obsession that the Russians are yearning to attack and occupy Western Europe, and that this is the principal danger....If the armed forces of the United States and Britain were not present on theContinent the problem of defense for the continental nations would be primarily one of the internal health and discipline of the respective national societies, and of the manner in which they were organized to prevent the conquest and subjugation of their national life by unscrupulous and foreign-inspired minorities in their midst.[2]

These words describe a conception of the nature of the alliance and its strategic imperatives that many considered adequate in the beginning. But is this conception adequate now? Kennan has also observed that "A defense posture built around a weapon suicidal in its implications can serve only in the long run to paralyze national policy, to undermine alliances, and to drive everyone deeper and deeper into the hopeless exertions of the weapons race."[3] Many saw that this was true even before Russia's atomic explosion in August, 1949. Surely, it is urgently true now.

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1. Conceivably, twelve to eighteen German divisions conventionally armed (assuming that the prohibition of German nuclear weapons would be part of any bargain acceptable to the Soviet Union) could perform some of the functions of NATO's present shield; but they would be greatly hampered by the absence of advance joint planning and integration with NATO, not to mention the adverse effect of their detachment on morale. Only if armed forces in the area of Soviet and American withdrawal were strictly limited by reliable inspection might this liability be offset.

2. Russia, the Atom, and the West, pp. 62,63.

3. Ibid., p. 54.

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ARMIES IN THE PROCESS OF POLITICAL MODERNIZATION

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ARMIES IN THE PROCESS OF POLITICAL MODERNIZATION

by

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Only a few years ago it was generally assumed that the future of the newly emergent states would be determined largely by the activities of their Western-fused intellectuals, their secularistically inclined bureaucrats, their nationalist ruling parties, and possibly their menacing Communist parties. It occurred to few students of the underdeveloped regions that the military might become the critical group in shaping the course of nation-building. Now that in at least eight of the Afro-Asian countries the military has become the key decision-making elements we are confronted with the awkward fact that there has been almost no scholarly research on the role of the military in the political development of the new states.

Lack of Knowledge or Interest

The trend of recent years toward increased authoritarian rule and army-dominated governments raises questions which seem only to emphasize the limits

of our knowledge. Is our historic belief that any encroachment of the military into the civilian sphere of government is a blow to liberal government and civil liberties valid for these new states? Or is it possible that military rule can, in fact, establish the necessary basis for the growth of effective representative institutions? Have events reached such a state in parts of Asia that we should welcome army rule as the least odious of possible developments and probably the only effective counter force to Communism?[1] We seem to be caught with two conflicting images of the political character of armies in backward countries: first, there is the early image derived largely from Latin America and the Balkans in which the soldier stands for administrative incompetence and inaction, and authoritarian, if not reactionary values; and second, there is the newer picture of a dynamic and self-sacrificing military leadership committed to progress and to the task of modernizing transitional societies which have been overpowered by the "corrupt practices" of politicians. How is it possible to tell in the particular case whether army rule will lead to sterile authoritarianism or to vigorous development?

To find answers to such questions means exploring where two areas of relative ignorance overlap; for Western scholarship has been peculiarly inattentive to the sociology of armies, on the one hand, and the processes of political development and nation-building, on the other. It has only been in recent years, as Professor William T. R. Fox observed[2] that the Western scholar's bias against the military has been weakened to the point that we are prepared

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[1] Guy J. Pauker, "Southeast Asia as a Problem Area in the Next Decade," World Politics, Vol. XI, No. 3, April 1959, pp. 325-345.

[2] Conference on Political Modernization, Social Science Research Council, Committee on Comparative Politics, Bolton Ferry, June 8-12, 1959.

to go beyond the field of civil-military relations and recognize the entire range of national security problems as a respectable province for scholarship. Given the hesitation with which we have approached the study of the primary functions of armies it is not surprising that so little systematic thought has been given to the political sociology of armies and the roles that military institutions play in facilitating the processes of industrial and political development. It is hardly necessary to document the fact that we have limited knowledge about the nature of political development and the processes in transitional societies that produce the emerging political institutions. Without greater knowledge about these developments we lack perspective for viewing the rise of authoritarian practices and the emergence of military rule in transitional societies.

It is, of course, not uncommon for people to lack knowledge about important matters; what is significant with respect to this particular problem is that we seem to be lacking also in an appropriate doctrine which might serve to guide our policy actions in place of tested knowledge. To put the matter bluntly, for all our commitment to democratic values, we have no doctrine as to what is required for a society to move from a traditional and authoritarian basis of life to the establishment of democratic institutions and representative institutions.

In the past when this problem arose with respect to colonialism our typical response was an anti-intellectual and anti-rational one: the colonial powers should relinquish their authority, and then an automatic and spontaneous emergence of democratic practices and institutions could be expected. Unfortunately, however, with the ending of colonialism we find we have distressingly little useful advice to give to the leaders of the newly emergent countries who are

struggling to realize democratic ways. We have no doctrine to offer them, no strategies for action nor criteria of priorities, no sense of appropriate programs nor sets of hypotheses for explaining the paths to representative government. At best we have been able to pull together some concepts and considerations from embryonic theories of economic growth and suggest that they might be treated as the guiding principles of political programs.

In contrast those interested in establishing other types of social and political systems - and most particularly, of course, the Communists - have a clearer sense of design and of priorities to guide their efforts. More often than not we have found that in place of developmental concepts and strategic plans we can offer only statements about the nature of democratic values and our vision of end-goals of political development. By placing stress upon the ideal rather than upon instrumental means we have inadvertently tended to highlight the extent to which the newly emergent states have failed to realize in practice their aspirations. In so doing we have contributed to the growing feeling of insecurity common to most of the leaders of such countries. These are generally men who behind their bold exteriors are plagued with self-doubts and uncertainties about their abilities to run their countries successfully. Without clear notions as to the stages that must be passed through if their transitional societies are to realize free institutions, these leaders are in danger of interpreting the gap between current performance and democratic ideals to mean that their peoples are doomed to failure.

Our lack of doctrine for the building of tolerably free societies is most conspicuous with respect to the proper role of the authoritative organs of government. How should the machinery of state, usually inherited from an authoritarian colonial regime, be employed to ensure political development?

Can these essentially coercive instruments of the state, which in a democratic order are the servants of the popular will, be utilized to guide a tradition-bound people to democratic values and habits of thought? Or is the result of any such efforts, no matter how well intended, likely to be a drift toward an authoritarian order decorated with democratic slogans? It would seem that these questions might serve as an appropriate beginning point for a search for both a doctrine - political tutelage and a better understanding of the role of the military in the process of political modernization. Since some aspects of the political role of the military can be analyzed in general terms while others are highly influenced by the unique conditions of the particular societies, we shall divide our analysis into two parts. In the first part we shall be viewing the position of the military in the process of social change that is common to all the new societies. In the second part we shall examine in greater detail the role of the army in a particular transitional society, that of Burma. A final section will be devoted to some conclusions for American policy.

Part I

An underlying assumption behind much of Western political thought is that political institutions are above all else the products of the dynamic forces peculiar to the particular society and thus they reflect the distinctive values and the styles of action common to that society. It is acknowledged, of course, that once institutions are established they tend to have a dynamic aspect of their own and hence influence the values and the expectations of the population. There is thus an assumption of a circularity of relationships or of a state of equilibrium. However, the fundamental view is still that the dominant dynamics of the system lie in the society as a whole and that it is the institutions

which must be responsive. Governmental institutions can display initiative but fundamental change originates within the society.

When we turn to the newly emergent countries this model no longer seems appropriate. For in these societies the historical pattern has been the introduction of institutions from outside with a minimum of concession to the values and the informal patterns of behavior of the people. These fundamentally authoritative structures have thus tended to be shaped according to norms and standards established in foreign settings, and rather than responding primarily to indigenous values they have often proved to be the dominant dynamic factor in stimulating further changes throughout the society. These structures are usually among the most modernized organizations in the society. At the same time they generally play a primary role in modernizing other aspects of the society.

These considerations suggest that it might be useful to organize our analysis of the political role of the army around, first, the political implications of the army as a modern-type institution which has been somewhat artificially introduced into disorganized transitional societies; and second, the role that such an army can play in shaping attitudes toward modernity in other spheres of the society. By such an approach we may hope to locate some of the critical factors which may help to explain why the military in some underdeveloped countries have been the impatient champions of progress and development while in others they have been a retarding element. We may also hope to gain a basis for judging the probable effectiveness armies have in promoting national development and eventually democratic practices.

The Army as a Modern Organization

In large measure the story of the underdeveloped countries can be told

along the theme of countless efforts to create organizations in which resources can be effectively mobilized for the purpose of achieving new objectives. This is the problem of establishing organizations which have rationalized structures and which are capable of rationally relating means to ends in seeking their objectives. The history of much of the Western impact on traditional societies fits comfortably within this theme, for the businessman, planter, and miner, the colonial administrator, and the missionary and the educator were each in their own ways striving to establish modern-type organizations in tradition-bound societies. Similarly, the story of the nationalists and of the other Westernized leaders can be treated on essentially identical terms, for they too have been endeavoring to change the habits of their people by creating modern organizations.

Needless to say, there have been very few bright spots in the entire history of all of these attempts to develop modern-type organizations in traditional and transitional societies. It is certainly open to question as to who has been the more tragically heroic, or comically futile: the various kinds of Westerners struggling to establish their respective types of organizations in traditional societies, or the nationalist politician and the indigenous administrator endeavoring to build out of confusion and make the semblance of order and organization. However, out of all of these efforts it would seem that by balance the attempts to establish military organizations have been noticeably more successful.

It would be wrong to underestimate the patient care that went into developing and training the various colonial armies, and in the newly independent countries the military have been treated relatively generously in the allocation of scarce resources. However, in comparison to the efforts that have gone into

developing, say, civil administration and political parties, it still seems that inherently modern armies are somewhat easier to create in transitional societies than most other forms of modern social structures. The significant fact for our consideration is that the various armies created by colonial administration and by the newly emergent countries have been consistently among the most modernized institutions in their societies. Viewed historically, some of these armies have been distinguished organizations: the Indian Army, the Malay Regiments, the Philippine Scouts, the Arab Legion, the Gurkha Regiments and the Kings Own African Rifles, to mention only the more celebrated ones.

It would take us too far afield to explore the relative advantages military leaders have in seeking to establish their form of organizations in traditional societies. We need only note that there is a paradoxical relationship between ritualized and rationalized modes of behavior which may account for the ease with which people still close to a traditional order adapt themselves to military life. Viewed from one perspective a military establishment comes as close as any human organization can to the ideal-type for an industrialized and secularized enterprise. Yet, from another point of view, the great stress placed on the sense of professionalism and the extremely explicit standards for individual behavior make the military appear to be a more sacred than secular activity. The demands of discipline from one point of view seem to be functional to the need to minimize random and unpredictable behavior, while from another they seem to be constant with the considerations of custom and ritual common to the most tradition-bound organization.

For these reasons, and for others related to the hierarchical nature of the organization, the division between traditional and rationally oriented

behavior is not very great within armies[1]. Indeed, in any army there is always a struggle going on between a drift toward custom-bound behavior and demands for increased rationality. Historically, whenever there has been little change in the state of military technology the tendency has been for the non-rational characteristics to become dominant.[2] Given this inherent conflict in any military organization the question arises as to why the forces of custom and ritual do not readily dominate the armies of the newly emergent countries, causing them to be essentially conservative elements opposing rapid changes. In societies where traditional habits of mind are still strong one might expect the military to represent a strongly conservative force, and such was largely the case in the West during the pre-industrial period. In contrast, in most of the newly emergent countries their armies have tended to emphasize a rational outlook and champion responsible change and national development.

This state of affairs is largely explained by the extent to which the armies in these countries are shaped by contemporary Western military technology. In particular nearly all of the new countries have taken the World War II type of

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[1]It is significant that the most common weaknesses of civil bureaucracies in the new countries - like exaggerating the importance of procedure to the point of ritualizing the routine, and the lack of initiative and of a pragmatic and experimental outlook - are not as serious drawbacks to smooth functioning of military establishments. On the contrary, the very qualities that have hobbled civil administration in these countries have given strength and rigidity to their military establishments.

[2]The classic discussion of the spirit of militarism as contrasted with the rational military mind is Alfred Vagts, A History of Militarism: Romance and Realities of a Profession, New York, W. W. Norton, 1937.

army as the pattern for their military establishments.[1] In so doing they have committed themselves to create a form of organization which represents historically the peculiar product of the most highly industrialized civilization yet known. In almost every aspect of organization and structure the World War II type of army reflects its origins in highly industrial societies. Indeed, these modern armies are in themselves essential industrial-type entities. Thus, the armies of the new countries have been caught up in the newest spirit of the military which is one geared to rapid technological developments.

The fact that these new armies in essentially pre-industrial societies are modeled after industrial-based organizations has many implications for their political roles. One characteristic of these armies is, however, particularly significant: the high degree of specialization within the organizations is in terms of skills and functions only distantly related to the command of violence. There has generally been a tremendous increase in the number of officers assigned to staff functions as contrasted to line commands. As the armies of the newly emergent countries strive to realize their ideal models they have had to establish all manner of specialized organizations and departments which require skills that are either in short supply or non-existent in their societies. The Burmese army, for example, has in addition to the standard engineers corps and signal corps also special sections on chemical warfare, psychological warfare, and even a historical and archeological section. In all the new armies attempts have been made to introduce specialized training schools and advanced techniques of personnel management and procurement. Consequently, members of the more

[1] World War II was in itself a decisive event in the birth of many of these countries and, of course, the availability of large quantities of surplus equipment and arms made it realistic to aspire to a modernized army. American military aid has contributed to making the military the most modernized element in not only recipient countries, but also in neighboring countries which have felt the need to keep up with technological advances.

intelligent and ambitious officers have had to be trained in industrial skills more advanced than those common to the civilian economy.

The high proportion of officers assigned to staff functions means that large numbers of officers are forced to look outside their society to models for their own careers. The fact that army leadership, particularly the younger and more ambitious elements, generally comes from those trained in staff positions means that the intellectual atmosphere they create within their armies is one that is extremely sensitive to the needs of modernization and technological advancement. This form of martial spirit has little relationship to the command of physical violence and tests of human endurance. As a consequence the officer class often finds that it is spiritually in tune with the intellectuals and students and other elements in the society who are most anxious to become a part of the modern world. They may have little in common with the vast majority of the men they must command. In this respect the gap between the officer class and the troops which once was largely reinforced by social and economic class differences, and still is to some degree, has now been reinforced by differences in acculturation to modern life.

It should be noted that these revolutionary changes in the essence of military life have had a significant influence in altering attitudes about the military profession in different societies and hence has had an interesting effect on relative national power. Cultures which looked down on the military at an earlier level of technology have now given high prestige to the arms profession as it has raised its technology. For example, when armies depended entirely on human energy and animal power the Chinese placed the soldier near the bottom of the social hierarchy, but with present levels of advanced military

technology the soldier is near the top of the social scale in both Communist and non-Communist China. The change has been more in the nature of the military profession than in basic Chinese cultural values. Conversely, peoples who at one time were considered to have a "martial culture" may show little interest in, or aptitude for, the new kind of soldiering.

Above all else, however, the revolution in military technology has caused the army leaders of the newly emergent countries to be extremely sensitive to the extent to which their countries are economically and technologically underdeveloped. Called upon to perform roles basic to advanced societies, the more politically conscious officers can hardly avoid being aware of the need for substantial changes in their own societies.

It might seem that those occupying positions in other modern-type organizations in underdeveloped societies would also experience much the same feelings for the need of change in their countries. There are, however, three distinctive features of armies which seem to make them somewhat more dynamic centers in demanding changes.

First of all, armies are by nature comparative institutions in the sense that their ultimate function is the test of one against the other. Other modernized organizations all operate within the context of the individual society; and although their initial inspiration may have come from abroad, their primary focus is on internal developments. The civil bureaucracy, for example, can, and indeed has to, deal with its domestic problems with little regard as to what other bureaucracies in other countries are doing. In contrast, the soldier is constantly called upon to look abroad and to compare his organization with foreign ones. There is thus in the military profession a greater sense of international

standards and a greater sensitivity to weaknesses in one's own society.

Second, armies for all their concern with rationality and becoming highly efficient machines are actually relatively immune to pragmatic tests of efficiency on a day-to-day basis. Armies are created for future contingencies, and in many underdeveloped countries these contingencies have never had to be met. Even in countries where the army has been forced to deal with internal security problems, such as Burma and Indonesia, the effects have been mainly to increase the resources available for building up the army according to the ideal model, with remarkably few concessions being made to practical needs. Other modernized organizations in underdeveloped societies have to cope with more immediate and day-to-day problems; hence they must constantly adjust themselves to local conditions. They can not adhere as rigidly as armies can to the ideal image of their Western counter-part. Thus just as Western armies have often existed in a dream world of planning for types of wars that never occur, so armies of underdeveloped countries can devote themselves to becoming modernized and more "efficient" with little regard to immediate reality. While members of other modern-type organizations may desire to see social change in their society, they are likely to be more conscious of the need to compromise their ambitions and ideals in the light of existing conditions.

Finally, armies always stand at some distance from their civilian societies and are expected to have ways of their own, including attitudes and judgments, that are isolated from civilian currents. Thus again those within the armies of the newly emergent countries can feel somewhat divorced from the realities of a transitional society and focus more on the standards common to the more industrialized world. As a consequence they are often unaware of the difficulties

inherent in modernizing other segments of their society. Within their tradition all problems can be overcome if the right orders are given.

Armies as Modernizing Agents

We may now shift our perspective for viewing the political role of the military from that of seeing the army as one of the more modernized of the authoritative agencies of government in transitional societies to that of picturing the army as a key agency in modernizing the total society. In doing so we shall be moving into a less clearly defined area for the number of relevant considerations becomes much greater and consequently there are likely to be greater differences from country to country. Indeed, we shall only be able to treat at a general level of analysis the social and political aspects of military service and some of the more indirect influences of armies on civilian attitudes. When we arrive at the point of discussing the more explicit political policies of armies and the nature of military rule it will be time to turn to a particular case in its historical setting.

In all societies it is recognized that armies must attempt to remake those who enter them for it is assumed that the recruit has to be made over in the image of the good soldier. In underdeveloped societies there is the added dimension that the good soldier is also to some degree the modernized man. Thus it is that the armies in the newly emergent countries come to play key roles in the acculturative process through which traditional ways give way to more Westernized ideas and practices. The very fact that the recruit must physically break his ties and associations of civilian life and adjust to the more impersonal world of the army tends to emphasize the fundamental nature of this acculturation process which involves the movement out of the particularistic relationships of

traditional life and into the more impersonal and universalistic relationships of an industrialized society.

The pattern of army training is thus consistent with the direction of the basic process of acculturation in traditional societies. Within the army, however, the rate of acculturation is greatly accelerated. This fact contributes to the tendency of army officers to underestimate the difficulties of changing the civilian society.

Probably the most significant feature of the acculturation process as it takes place under the auspices of the army is that it provides a relatively high degree of psychological security. The experience of breaking from the known and relatively sheltered world of tradition and moving into the more unknown modern world is generally an extremely traumatic one. If we contrast the experience of a young recruit from the village with that of the fellow villager who is caught up in the process of being urbanized, it usually seems that it is the former who has the more sheltered, the more gradual introduction into the modern world. It is hardly necessary to point out the disturbing fact that the urbanization process as it has taken place in most Asian and African societies has generally tended to produce a highly restless, insecure population. Those who have been forced off the land or attracted to the cities often find themselves in a psychologically threatened situation. These are the people who tend to turn to extremist politics and to look for some form of social and personal security in political movements that demand their total commitment. In contrast, those who are exposed to a more technologically advanced way of life in the army find that they must make major adjustments, but that these adjustments are all treated explicitly and openly. In the army one can see

what is likely to happen in terms of one's training and one's future. This is not the case in the city.

It should also be noted that the acculturative process in the army often tends to be more thorough and of a broader scope than the urbanisation process. In all the main Asian cities there are those who still follow many of the habits and practices of the village. They may live still within the orbit of their family units and have only limited outside associations and contacts. These people have made some adjustment to the modern world, but they are likely to be faced with even more in the future, and thus they remain potential sources of political tension.

It should also be noted that the acculturative process in the army tends to be focused on the acquiring of technical skills that are of particular value for economic development. Just as the army represents an industrialized organisation, so most those who have been trained within it learn skills and habits of mind which would be of value in other industrial organizations. Historically in the West, armies have played a very important role in providing technical training and even direct services in the process of industrial development. The German army trained large numbers of non-commissioned officers who performed important functions as foremen in the German steel mills and in other industries. In America the Corps of Engineers of course played a central role in the whole development of the West; and after the Civil War army veterans provided considerable accounts of the skill and knowledge which, when combined with the influx of immigrants, provided a basis for much of our industrial development. In Asia too, we can see much the same story being enacted now. Before the war the compulsory training in the Japanese army provided the whole

society with increasing reservoirs of man-power which contributed directly to the development of an industrial society. In India army veterans have played an important role in not only lower levels of industrial jobs, but also in management positions. In Malaya and the Philippines the army has been the main source in training people in operating and maintaining motor vehicles and other forms of machinery.

Politically the most significant feature of the process of acculturation within the army is that it usually provides some form of citizenship training. Recruits with traditional backgrounds must learn about a new world in which they are identified with a larger political self. They learn that they stand in some definite relationship to a national community. In this sense the army experience tends to also be a politicising experience. Even if recruits are not given explicit training in political matters, they are likely to learn that events in their society are determined by human decisions and not just by chance and fate. Within the army the peasant may come to realize that much in life can be changed and that commands and wishes have consequences. Thus even aside from any formal training in patriotism the recruit is likely to achieve some awareness of the political dimensions of his society. It is therefore not surprising that in many of the newly emergent countries veterans have had appreciable political influence even after only limited military experience.

The armies in the newly emergent countries can thus serve as instruments for providing a sense of citizenship and an appreciation of political action. In some cases this can lead to a more responsible sense of nationalism. Indeed, the recruit may be impressed with the fact that he must make sacrifices to achieve the goals of nationalism and that the process of nation-building involves more than just the shouting of slogans. At the same time there is always

the potential danger that the armies will become the center of hyper-nationalistic movements, as in the case of pre-war Japan.

This spirit of military-inspired nationalism often encompasses a host of personalized emotions and sentiments about the civilian society which all stem from the fact that the army generally represents one of the most effective channels for upward social mobility. Invariably the men, and sometimes even the officers, come from extremely humble circumstances, and it is only within the army that they are first introduced to the possibility of systematically advancing one's self. In transitional societies, in which people's station in life is still largely determined by birth and by chance opportunities, powerful reactions usually follow from placing people in a position where they can recognize a definite and predictable relationship between effort and reward. The practice of giving advancement on merit can encourage people, first, to see the army as a just organization deserving of their loyalties, and then possibly, to demand that the same form of justice reign throughout their society.

Those who do move up to positions of greater respect and power through the army may often carry with them hostilities toward those with greater advantages and authority in the civilian society. The tendency of the military to question whether the civilian elite achieved their station by merit means an added level of conflict in civil-military relations in most underdeveloped countries. More often than not the military show these feelings by seeking to make the issue of national loyalty and personal sacrifice for the state serve as the crucial test of national leadership.

We have come now to the question of the attitude of the military toward civilian leadership and toward the other agencies of government. This brings

us to the direct political role of armies and the need for a specific historical study.

Part II

Before moving all the way from our general analysis to a particular case we may note that there are some intermediary categories that are useful in seeking to understand the relationship of the military to the other modernizing processes. We should outline them in order to indicate the possible relationship of the particular case we will be examining to other examples.

There are first those patterns of development in which the military stand out because in a disrupted society they represent the only effectively organized element capable of competing for political power and formulating public policy. This situation is most likely to exist when the traditional political order, but not necessarily the traditional social order, has been violently disrupted and it has been necessary to set up representative institutions before any of the other modern-type political organizations have been firmly established. The outstanding example of this pattern of development is modern China from the fall of the Manchu dynasty in 1911 to the victory of the Communists. Indeed, it is possible to think of the period as one dominated by a constant struggle to escape from the grim circumstances which emerged when only military organizations survived the fall of the traditional system. Hence, the military became the only effective political entity. Thereafter nothing could be done without them, and yet the military could do little without effective civilian institutions. Comparable situations seem to exist at present in some Middle Eastern countries where Western influences brought a commitment to republican

institutions, but left the army as the only effective modern political structure in the entire society.

A second category includes those countries where the military, while formally espousing the development of democracy, actually monopolize the political arena and force any emerging civilian elite to concentrate on economic and social activities. In many ways this arrangement is reminiscent of the Belgian variety of colonialism. At present, the most outstanding example of this form of rule is Thailand.

A third major category, which is probably the largest, consists of those countries in which the organization and structures essential to democratic government exist but have not been able to function effectively. The process of modernization has been retarded to such a point that the army, as the most modernized organization in the society, has assumed an administrative role and taken power. In these cases there is a sense of failure in the country and the military are viewed as possible saviors. Burma, the particular case to which we may now turn, falls in this category.

From the General to the Particulars: Burma

The casual observer of the Burma scene must have been surprised when on September 26, 1958, it was announced that the army would assume the powers of government. In many respects Burma appeared to be a country that was heroically struggling to realize the ideals of representative government. It is true that possibly no government in history has had as many groups turn against it and employ violence as did the Burmese government shortly after the country gained its independence. However, after a decade of confronting all manner of insurrectionaries, the government did seem to be in a stronger position. There had

been considerable discussion of socialist planning and hope had been held out that the country's economy might soon be restored to its pre-war levels of per capita production.

In the spring of 1958 the split in the ruling party, the AFPFL[1], revealed that all was not well behind the facade of progress and harmony. Within the party various groupings had built up their relatively autonomous bases of power, and personal cliques had expanded into personal followings based on patronage. Most important of all, the falling out among the top leaders of the party led to a division of every political group and organization in the land. The split which might have initiated a two-party or possibly even a multi-party system was about to be carried to the extreme of dividing all the significant institutions in the land. Only the army had remained united; and even it was undergoing tremendous internal strains, so that there was good reason to believe that had it not assumed a direct political role it too might have split. The time was appropriate for the army to show its authority and although there was little rejoicing over the prospect of military rule, there was no group, except the Communists, who were prepared to challenge the army's will.

The Officer Class and the Civilian Elites

When we look into the social and educational backgrounds of the key group of Burmese army officers we find that, except for the fact that they have had slightly more formal education, they are remarkably similar to the country's political leaders. Indeed, the majority of the twenty-three colonels who are now leading the government were at one time either politicians or close associates

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[1]The initials originally stood for the Anti-Fascists People's Freedom League but the words have long since lost their emotional significance while the initials have become increasingly emotion-laden.

of politicians. Most of these men were involved in the independence movement and were assigned in an almost random fashion to careers in the army once it became necessary to staff all the institutions of government.

The social homogeneity of the military and political leadership of Burma can also be readily traced in the pattern of intermarriage among the families of the two groups. Of the five colonels in the innermost circle, one is married to the sister of one of the four top politicians, while the sister of another of the colonels is married to another of these politicians. One colonel was a former cabinet member who, when he entered the army, had a series of remarkably rapid promotions.

The close association of the officer class with the politicians apparently made the officers feel that they were intimately acquainted with and fully knowledgeable about all aspects of Burmese politics. Indeed, in the light of the intensely personal nature of the inner workings of Burmese politics, it is quite likely that this was so. The extent to which these officers were aware of even the most subtle political developments may have heightened their alarm over events. Also, their sense of acquaintance with the political scene must have made it seem less inappropriate for them to intervene directly.

In spite of the similarity of their earlier backgrounds, the experiences of army training and the responsibilities of command brought many changes in the outlook of the army officers. A decade of frustrations had left the politicians confused and plagued with anxieties and self-doubts. In contrast, during the same period the officer class became increasingly confident of its ability to command and demand respect. Both groups consisted mainly of people who found decision and choice difficult, but for the army officer the range of alternatives

was narrower, their problems were more clearly structured, and thus they came to have belief in their ability to demand decisive action of others.

The constant problem of the insurrectionaries forced the military to assume increased responsibilities, first for law and order, and then for numerous other aspects of government. In the civil war situation the army was forced to take direct authority in many districts. In most of these districts there ensued a three-way struggle for authority between the army command, the civil administration, and the local AFPFL leaders. Lines of authority were constantly being confused and increasingly arbitrary acts were becoming commonplace and decisive. This development occurred in the context of an earlier decline in the standards of local administrations. Briefly, the story before the army entered the picture was one of competition between the civil administrators and the district AFPFL leaders. In the pre-war arrangement the key official in the district was the Deputy Commissioner who had that unique combination of power and responsibility that is found in all British colonies and who usually had the title of District Officer. After independence the AFPFL became the key decision-making group in the country and this meant that at the district level the authority of the Deputy Commissioner was eclipsed. Local representatives of all the departments and ministries had to look increasingly to the AFPFL leaders for direction rather than to the Deputy Commissioners.

Army influence in the districts favored a reconsolidation of authority and a clearer relationship between authority and responsibility. The army preferred to deal with specific officials who had wide authority rather than party leaders of considerable power but undetermined responsibility. In short, the army favored a return to the pre-war type of village headman and deputy commissioner

and thus increasingly the army in the districts clashed with the AFPFL representatives. These party politicians often had considerable power and were not particularly responsive to direction even from the AFPFL leaders in Rangoon.

These developments in the districts had been taking place during the last few years. They suddenly became more significant after the AFPFL split in the spring of 1958. With the falling out of the top leaders the center of Burmese political activity moved out from Rangoon to the districts. Events could no longer be determined entirely by the interplay of personalities in Rangoon. Leaders had to look to the districts for support, and this was particularly the case because of the expectations that there might be national elections. Local party leaders found themselves the centers of intense power struggles as each faction of the divided AFPFL sought to gain or hold their support. As the local political leaders asserted their authority over the civil administrators in the districts and sought to exploit the machinery of government to win an election, they increasingly came into conflict with army authority. Although this issue was never well articulated, for each group had its reasons for not publicizing it, it did convince many army officers that the activities of the politicians were about to destroy the country. This conflict in the districts provides the background for the eagerness and the enthusiasm with which the army turned against the politicians in the fall of 1958.

The Burmese army had several advantages as it assumed an increasingly political role. A decade of difficulties with insurrectionaries had led to substantial military budgets. Compared with other organizations depending upon public funds, the army was by far the most favored group. As a consequence the army was able to modernize itself more rapidly and more completely than most

institutions in the country. Also, the relatively generous way in which the army was treated reduced considerably its internal problems of allocating resources, and hence there was less internal tension within the army than in most public organizations in the country. In this connection it should be noted that the army officers as a group had a conspicuously higher standard of living than any other group that depended upon the public treasury. Army quarters provided them with better housing than all other officials except cabinet ministers, and in general they followed a way of living that made it clear to all that they were a special element within the ruling elite.

With the tension that followed the split in the AFPFL the army increasingly stood out as the only united group in the society. It also appeared to be the only organization capable of carrying on effective action. Under the circumstances of domestic tension increasing numbers of people began to turn to the army for leadership. This attitude stemmed in part from the fact that in modern Burmese history men in uniform have tended to assume authority during times of crises. The image of decisive and effective authority in the form of men in uniform was also implanted in the Burmese mind during the period of British rule.

Although on the surface the army appeared to be a relatively efficient organization, it should be noted that much of its drive for power came from a sense of frustration in realizing its own objectives. The fact remains that in spite of the resources assigned to it, the Burmese army had not succeeded in stamping out the insurrectionaries. Indeed, as a military organization it did not have an impressive record. Many of its weaknesses as a military organization made it more anxious to assume a political role. Among the army officers there was

an increasing feeling that the failures of the army could be attributed primarily to the actions of the politicians. When the army failed in its technical operations it tended to blame the civilian population for lack of aggressive leadership. Thus the frustrations and weaknesses of the Burmese army as a fighting force contributed to its readiness to assume a political role.

The army's distrust of civilian leadership crystallized in the summer of 1958 when U Nu, in his efforts to strengthen his government, indicated a willingness to deal with the Communists and other insurrectionaries. Shock and consternation over the idea of treating with a decade-old foe was enough to unite the army and provide the basis for concerted political action.

The ease with which the Burmese army was able to assume a decisive political role stemmed in large part from the inability of the civilian groups in the society to perform their functions effectively. The failings of the civilian leadership are far too numerous even to be listed here. They included the usual difficulties that have retarded development in most of the newly emergent states. In the case of Burma, most of these difficulties can be summarized as being a failure to develop effective relationships between those in administrative roles and those performing political roles. Indeed, it can be said that the history of Burmese independence has been marked by an inability of the administrator and the politician to work together. In part the difficulties followed from fundamental differences in political orientations which were reinforced by differences in social background and the circumstances under which each was inducted into roles of political action. The politicians, often extremely unsure of themselves, tended to have a profound distrust of the administrator class, while the administrators tended to view with contempt and fear those who were experts

in popular agitation. The result was a gap between action and articulation. Programs could be announced, but administrative action did not always follow and conversely, the basic requirements for effective administration did not always receive support from those who dominated the channels of political communication.

The failure of the politicians and administrators to coordinate their efforts tended to influence public attitudes and thus set the stage for a popular acceptance of drastic changes. It is extremely difficult to guage public opinion in Burma because of the lack of autonomous interest groups capable of articulating the diverse interests of the entire community. The AFPFL for over a decade had claimed a monopoly of articulating the legitimate interests of the Burmese society. However, even before the split there was considerable evidence of popular dissatisfaction with the practices of the AFPFL politicians. Among the more politically conscious groups there was a increasing feeling that Burma had not lived up to its expectations and a sense of failure was spreading among the urban elements. Short-run disappointments, reinforced more profound self doubts and anxieties to produce an ever sharpening sense of hostility towards politicians as a class.

This sense of hostility was fed by a feeling of fear and distrust evoked by the arbitrary and ruthless acts of middle echelon political leaders. An atmosphere of fear was first created within the ranks of the administrators, particularly after U Nu established the Bureau of Special Investigation, which often followed the procedure of arresting people first and then investigating. Fear of the AFPFL, however, spread beyond the ranks of administrators. The power of the party to control licenses and government employment affected the lives of large numbers of people and when these powers were used arbitrarily

they set in motion chain reactions of fear and hostility. These developments all contributed to a feeling that there was widespread corruption within the ruling circles. U Nu himself, by constantly stressing the need to eliminate all forces of corruption, provided further ammunition for those who saw the AFPFL government as an essentially dishonorable enterprise.

Hostility toward the politicians did not develop into hostility toward democratic institutions as such. On the contrary, much of the criticism which was directed against the politician was in terms of his failure to adhere to democratic norms. Thus what has been seen in the West as a possible failure of democratic institutions has not been so interpreted by a more politically sophisticated Burma. Instead the more common attitude has been one of expressing animosity toward a leadership which is considered to have made the Burmese appear less capable of operating a democratic system than in fact they are.

The extent to which Burmese in all quarters have clung to the democratic ideal is to be seen in the extraordinary stress on legal form that has accompanied the advent of military rule. All elements in Burmese politics except the Communists have united in refusing to use the word coup d'état, and the influence has been felt through legally constituted channels rather than through arbitrary actions.

Prospects of Military Rule

Since the military have assumed a direct political role in Burma they have influenced almost all levels of the society and taken an interest in all the operations of government. Out of all their actions the picture that begins to emerge is that of a concerted attempt to re-establish what is essentially the pre-war pattern of Burmese government. Indeed, the ideals and the goals of the

army seem to be quite explicitly those of the old British Burma. In particular the emphasis is on the re-establishment of administrative rule and the restraining of popular, agitational politics. Law and order and efficient operation of government have become the guiding principles. Administrative problems as they emerge are to be handled quickly and efficiently. The government is assumed to know what is the best interest of the country.

The strength and the weaknesses of the current pattern of government in Burma are essentially the same as those common to a colonial administration. There has been a marked improvement in the efficiency in public administration. Authority has also become far more regulated and predictable. There has been a considerable reduction in the arbitrary use of political power. The focus of the government has been on developing essentially non-political activities which can all be seen as improving the economic lot of the population. Instead of encouraging people to become involved in political activities the army has sought to make people more aware of their particular economic and social roles in a society and how they should improve themselves in performing these roles.

The pattern of army rule in Burma, however, also contains within it the same seeds of instability as are inherent in any colonial administration. In particular the army seems to be unavoidably stifling spontaneous political action. The army can continue to articulate the ideals of nationalism and of patriotism, but it can not articulate the more particular and the more conflicting interests of all elements within the society. Communication between the ruler and the ruled is no longer that of the political market place; it has become dependent upon the informer and the agent. Above all else, army rule in Burma lacks any mechanism for handling conflicting interests within the society. The means for

adjusting and accomodating the demands of various interests is missing for it is assumed that the administrative programs of government are in fact in the best interest of all.

In looking to the future, it is hard to predict what pattern of government is likely to follow the current phase of military rule. The army itself, but even more anxiously the politicians, proclaim that it will all end with popular elections and a return to civilian government. As the months have passed, however, the army has in its actions become increasingly involved in government.

The problem of what is likely to come next is indeed an extremely difficult one. The British, like all colonial rulers, could always go home, but there is no such withdrawal for the army. For the army to return to its barracks is not at all the same as the termination of colonial rule. For even if the army were to withdraw from the center of the political stage, everyone would be aware that it could do again what it has just done. This fact is bound to color political developments in the future.

At best we can only outline what seem to be the more likely alternative patterns for the future. There is first of all the possibility that the army will become increasingly involved in all phases of public life to the point that it can not easily extract itself, even if it chose to. With this development no doubt would come a general decline in the status of the army. It would no longer be seen as an essentially non-political institution which at great sacrifice was trying to preserve the society. Rather the army would come to occupy a position in Burmese society somewhat comparable to that which the APPL has occupied during the last decade. This is to say that the army would give a degree of unity to the whole society while dominating almost all aspects of

of public life.

A second possibility is that the army leadership will become increasingly frustrated in its attempts to direct the civilian machines of government and this may lead to divisions within the army itself. Faced with the prospect of the army splitting, there might be strong pressures within the army to take a less active political role.

A third and probably the most likely pattern is the emergence of a mixed political system in Burma in which the army will continue to assert considerable authority in many spheres of public life, but there will also be certain areas where civilian politicians will be relatively free to act. The result would be a combination form of government in which the army would screen all potential politicians and those who receive approval will be given a substantial degree of power.

This pattern would in effect be a form of political tutelage and in a sense the Burmese society would again be faced with a problem of how to move out of a stage of essentially administrative rule and into an era where an open political process could be established as a guide and a restraint to the machinery of government. The ideal might be that in time the role of the administrator and the role of the politician would be so defined in Burmese society that democratic government can be established.

For this development to take place would require considerable political skill. At present the prospects are not particularly encouraging. It is true that the army has been able to improve considerably many areas of public administration. However, the army has shown itself remarkably insensitive to the essential features of a democratic political process. Indeed, the army more than

even most colonial governments has shown hostility toward political criticism. There has also been some decline in the respect for law and a greater willingness to utilize arbitrary acts of authority. Although in the last analysis the future of Burma will be determined by the Burmese, the kind of assistance they receive from abroad can become a critical factor in determining the pace and direction of developments.

Part III

There has been a tendency in some quarters to interpret the trend toward military rule as being favorable to American policy interests. In particular, army rule has been welcomed as promising greater political stability and firmer policies against Communism. Unfortunately in the past we have generally been poor judges of leadership in the new countries. In fact, we have been so anxious to wish the new countries well that we have not been particularly objective or realistic in appraising their national leadership; and consequently we have often placed faith in, and indeed idolized, men who are mediocre by any standard of measurement. The fault is more serious than just a misplaced sense of charitableness for by refusing to employ realistic standards of judgment we contribute to the lack of realism and the prevalence of buncombe in the political life of many of these countries.

In seeking a realistic estimate of the potential role of the military in the political development of particular countries it is also necessary to avoid being excessively influenced by ideological considerations which may be only of relevance in advanced societies. We have in mind, in particular, the Western stereotype of the military as a foe of liberal values. This bias, for example, tends

at present to take the form of seeing "military aid" as a threat to economic and political development and assuming that only "economic aid" can make a positive contribution to such form of development. In some cases "military aid" has in fact made substantial contributions to road building, health facilities, communications networks and the like, all of which have directly facilitated economic growth. In other cases it has been equally clear that our military aid has seriously retarded economic development by diverting an excessive amount of the nation's energies into unproductive channels. The point is only that possibly more than elsewhere, it is necessary in the newly emergent countries to avoid stereotype and to expect many paradoxes.

If we are able to do so we will be less surprised when, for example, it turns out that it is through the military field that we have best been able to establish effective relations with the most strongly neutralist nations in Southeast Asia. With respect to both Burma and Indonesia we have had considerable difficulties in almost every dimension of our relationships. Recently, however, it has appeared that we have been able to develop more genuine and straightforward relations with their military than with any other political element. Out of these relations have come further possibilities for cooperation. Thus, rather ironically, after the Burmese terminated our program of economic assistance to them, it was only possible to re-establish such assistance by first providing them with military aid. In this way confidence was re-established and the stage set for their reacceptance of economic aid.

This particular example may, in fact, point up the most important considerations for our policy toward the army in the new countries. For the curious reasons which we have pointed out the army is often the most modernized public

organization in an underdeveloped country and as a consequence its leaders often feel more self-confident and are more able to deal frankly and cordially with representatives of industrialized countries. Often the military leaders are far less suspicious of the West than civilian leaders because they themselves are more emotionally secure. This sense of security makes it possible for army leaders to adopt a more realistic outlook about conditions within their countries. All of these considerations make it easier for the military leaders to accept the fact that their countries are weak and the West is strong without becoming emotionally disturbed or hostile toward the West. Since these leaders seem to have less need to avoid realities they are in fact for us easier people with whom to deal and carry on straightforward relations.

It is also, however, important to note from the example that it is possible, and indeed it is essential, to expand a narrow relationship with the military into a much broader one. Satisfactory relations with the military can become a dead end, just as military rule itself can become sterile, if it does not lead to an interest in total national development.

This is only to say that while it may be possible to find in the armies of underdeveloped countries an element of stability, we should not confuse this with political stability for the entire society. The military may provide an opportunity and a basis for cooperation, but the objective must remain the development of stable representative institutions and practices. In planning for this objective it is essential to conceive of it as involving far more than just the efficient administration of public policies. It is necessary to keep in mind that in the past the West has come to these societies largely through the role of administrators. This was the nature of colonialism, and we have tended to

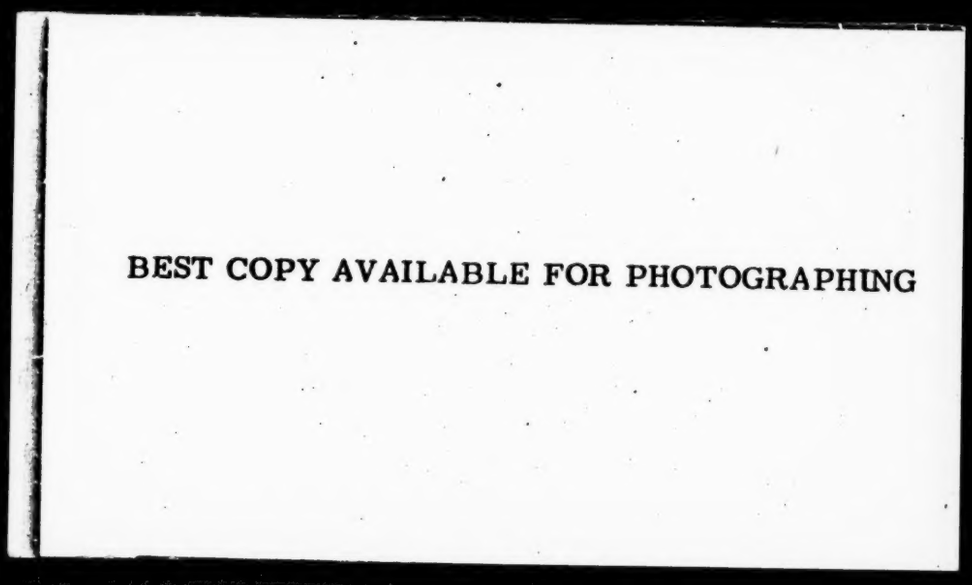
step into this role with our emphasis upon economic aid. In cooperating with the military we again are essentially strengthening this role of the administrator.

Now, in most underdeveloped countries there is a genuine need to improve the standards of public administration, and, in fact, unless such improvements take place they will be able to realise few of their national goals. However, there is a deeper problem, and this is the problem of developing effective relations between the administrators and the politicians. As we have seen, it was the inability of these two groups to work together that brought a time of trouble to Burma.

The disturbing fact is that we can with relative ease help people perform administrative roles, but we have not been particularly successful in devising ways of training people to the role of the democratic politician. In many respects this difficulty is the heart of the problem in our relations with the new countries.

This leads us to the conclusion that the military in the underdeveloped countries can make a major contribution to strengthening essentially administrative functions. In the past the technologically advanced West has dealt with traditional and transitional societies largely through the role of administrators, and if the new countries are to become modern nation-states they will have to have a class of competent administrators. They will also, however, have to have responsible and skilled politicians. Therefore, in cooperating with the military in these countries we should recognise that they can contribute to only a limited part of national development. In particular, in assisting them to raise standards in the realm of public administration we should also make certain

that our assistance does not lead to a stifling of an even more basic aspect of political development: the growth of responsible and representative politicians.


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ALEXIS DE TOCQUEVILLE AS POLITICAL THEORIST

by

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Prepared for delivery at the 1959 annual meeting of the American Political Science Association, Washington, D.C., Mayflower Hotel, Sept.10-12, 1959.

I.

It is fitting that this meeting note and commemorate the centennial of Alexis de Tocqueville's death. But I must confess that my topic today has been in part pre-empted by our imminent visitor, Mr. Khrushchev. Last April he received the advance release of an address on mutual security to be delivered by President Eisenhower at Gettysburg College. This is what he read:

> First, what are the facts?
>
> The first important fact is actually a prophecy--unbelievably clear and accurate--made by a distinguished student of American affairs who visited this country the very year this college was founded--1832. He was a Frenchman. Alexis de Tocqueville, and I would like to quote for you this observation which he made well over a century ago:
>
> "There are at the present time two great nations in the world, which started from different points, but seem to tend towards the same end. I allude to the Russians and the Americans..."
>
> "The American struggles against the obstacles that nature opposes to him, the adversaries of the Russian are men. The former combats the wilderness and savage life; the latter, civilization with all its arms. The conquests of the American are therefore gained by the plowshare; those of the Russian by the sword. The Anglo-American relies upon personal interest to accomplish his ends and gives free scope to the unguided strength and common sense of the people; the Russian centers all the authority of society in a single arm.

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> The principal instrument of the former is freedom; of the latter, servitude. Their starting-point is different and their courses are not the same; yet each of them seems marked out by the will of Heaven to sway the destinies of half the globe."
>
> Today, 127 years later we find the Russian nation to which de Tocqueville referred, now taken over by Imperialistic Communism, hoping to sway not half, but all the globe.
>
> Its methods are all-inclusive, ranging through the use of propaganda, political subversion, economic penetration, and the use of threat of force.

Immediately Mr. Khrushchev decided to hold a seminar on Tocqueville with the editors of Pravda. Among other things, he remarked that President Eisenhower had:

> referred to the appraisal of Russia and the Russian people made by Tocqueville, A French reactionary of the past century. However this Count won not-oriety for his fabrications not only about Russia, but also about his own country, France

Two days later, an article appeared elsewhere in the Soviet press with the title "Is Count de Tocqueville a Help to President Eisenhower?" It presented the following results of Soviet research:

> In the 1830's Tocqueville visited America to study the conditions under which the democracy of the United States arose...Everything that was happening in France at the time was causing confusion among the nobility. The French Minister of Internal Affairs commissioned him to ascertain whether American democracy might not be the social system that would rescue the French exploiting classes from the attacks of the masses.
>
> ...Tocqueville liked American democracy in general because the Americans 'excluded all colored people from the concept of the people.'
>
> ...Tocqueville was never in Russia and he judged our country and our people by the stories carried out by Napoleon's soldiers who were not in the best frame of mind when they quit Moscow.
>
> ... The Americans are dragging this Count along to Geneva!

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This full-scale assault on Tocqueville is all the more amusing because in his actual speech President Eisenhower omitted the passage from Tocqueville. But it must be said that despite the far-fetched distortions of Mr. Khrushchev and his team of researchers, that the sympathies of those who study Tocqueville are not altogether with the President and his speech-writer. There is a basic vulgarity about the incessant use--separated from all supporting argument--of this and other passages of Tocqueville. Two years ago the Secretary of the Defense chose to edify the alumni of Harvard with this same passage, which, by coincidence, also served as the opening of another commencement address being given on the same day to the graduates of M.I.T. Should this practice continue much longer, there is not a little danger that Tocqueville will come to be regarded as a kind of political Polonius, whose stock-in-trade is the threadbare maxim. In a now old and forgotten French play, the principal comic character is a garrulous old man, who prefaces everything he says with, "Comme disait M. de Tocqueville." It was this tag which Antoine Redier took as the title of a significant book which did much to revive the serious study of Tocqueville. And it is to the history of Tocqueville's reputation and the view of Tocqueville which is now emerging that I shall address myself.

II.

At his death, although politically isolated in France, Tocqueville was regarded as among the few thinkers of his time certain to take their place among political philosophers of the first rank. By 1893, A.V. Dicey was already commenting that Tocqueville's fame was suffering an eclipse similar to that undergone by his English friends, J.S. Mill, Grote, Senior, and Greg. The explanation seemed clear to Dicey: Tocqueville was a liberal, and everywhere collectivism had succeeded individualism as the dominant public philosophy. Forty years later Albert Thibaudet, expressing continental opinion, dismissed Tocqueville's claim to serious attention. The year was 1934, the occasion, a special number of the Nouvelle Revue Francaise dedicated, not to Tocqueville, but to Gobineau. The First World War, the rise of the Soviet Union and Fascist Italy, the great depression, and the recent victory of the Nazis--all these, in Thibaudet's eyes, rendered Tocqueville's message obsolete. Like Montesquieu, to whom he had been so often compared, Tocqueville spoke the common language that had once linked the politics of England and France.

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> Their political and intellectual capital was deposited in a London bank. But what bank? The bank of Liberalism. They belonged to those periods when Liberalism was the great political and intellectual export of England, ...its liberal revolution coinciding with the industrial revolution. At that time the political experiences of the Anglo-Saxon countries were the most crucial. ...Since that time, ...Liberalism has foundered. The very term belongs to the past. ...At the same time, Anglo-Saxon countries have lost all power to expand. It is the other countries which produce those institutions of the left and right which now compel attention.

We know that the bank of London which Thibaudet declared bankrupt in 1934 turned out to have enough left in 1940 to make a down payment on the future of liberty in the West. And as yet it is not clear except in Moscow and Peking that "Anglo-Saxon institutions" are in fact moribund. However the case for a reappraisal of Tocqueville does not rest on that moral futurism, that conformity with the direction of history, which pervades Thibaudet's judgment. Out of the work done in the past thirty-five years by Antoine Redier, Harold Laski, Albert Salomon, G.W. Pierson, and J.P. Mayer, several new images of Tocqueville have begun to appear and compete. All of these interpreters agress in this: that Tocqueville was never the pure Liberal that Dicey and Thibaudet took him to be. Redier depicted Tocqueville as essentially conservative, Catholic, and monarchist. Salomon has constructed a persuasive picture of him as a profound moralist, whose call for liberty stemmed from personal need rather than that of class or party, and who confronted uncompromisingly the existential crises of a revolutionary age. The third conception of Tocqueville as the first great political sociologist has been championed both by Salomon abd J.P. Mayer. Laske, who had analyzed bourgeois liberalism, saw that Tocqueville did not fit into that category. Pierson, by his confrontation of what Tocqueville saw with what he wrote, greatly illuminated his method, although some, including myself, would dispute Pierson's judgment of its value.

The revival of Tocqueville is not based on the juggling of concepts. A flood of fresh material is now appearing

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in the invaluable new edition of Tocqueville's Oeuvres Completes being published in Paris under the direction of Mr. Mayer. He has estimated that eighty per cent of Tocqueville's correspondence was omitted from the so-called complete works published by Gustave de Beaumont in the 1860's. Nor was Beaumont a scrupulous editor of what did appear.

It is striking that Tocqueville has not yet been rehabilitated by any of the warring sects which divide American political science. Although the new definitive edition has now reached its eighth volume since 1959, the American Political Science Review has failed to notice any of these works. American histories of political philosophy scarcely mention Tocqueville, except as an influence on J.S. Mill. His name does not appear in Sabine, nor does he receive more than the most casual mention from Catlin, Cook, or Hallowell. It may be as J.P. Mayer has suggested, that political philosophers regard Tocqueville's concern with operative ideals as somehow inferior to the systematic, abstract quality of thinkers more usually studied. For the canon of political philosophy has remained much as it was during the age of Idealism. As for the members of that school which claims to center on the scientific study of political behavior, they for the most part ignore Tocqueville.

Among the Americans who specialize in our own political thought, Tocqueville's reputation has suffered few of the vicissitudes it has undergone in Europe. Yet for many, Tocqueville is a man of one book and that about the United States. This is an unnecessarily limited view. Much of the Democracy takes on a sharper focus when put next to Tocqueville's analysis. Consider, for example, Tocqueville's fear that democratic rule might turn into a tyranny of the majority. This point which from the beginning has aroused the greatest single objection to the book from Americans, has left the impression with some that Tocqueville is a conservative elitist. But twenty years later in the Old Regime and the Revolution, which many think to be his masterpiece, Tocqueville sharply condemned the eighteenth century Philosophes for their lack of faith in popular wisdom. This he contrasted to the respect generally shown by English and American thinkers for the majority of their fellow-citizens. And Tocqueville concluded:

Their intellect is proud and self-reliant but never,

> insolent, and it has led to liberty, while ours has done little but invent new forms of servitude.

All of Tocqueville's later work develops, revises, and deepens the themes of his first classic. Tocqueville's Recollections with its combination of feeling and insight is rivaled by few other political memoirs; his correspondence he used both to record first impressions and to hammer out his synthesizing ideas. And finally there are his travel notes and his public papers as foreign minister, parliamentarian, penologist, and member of the constitutional committee that devised the Second Republic. These documents add another dimension for there is a peculiar fascination which surrounds those political thinkers who have been called to apply their ideas to the shifting circumstances of day-to-day political life. From the pages of classical political philosophy, steps forward the legislator in the attempt to turn thought into act.

To cite Tocqueville is the temptation and probable downfall of anyone who writes upon him. But two passages may give the flavor of his correspondence and papers. One is a letter on Algeria dated 1846:

> The African question, complicated and important as it is, may be summed up in these words:--How shall we succeed in raising a French population, with our laws, our manners, and our civilization, and at the same time treat the natives with the consideration to which we are bound by honor, by humanity and our real interests.

The second is an account given to J.S. Mill, of a report written by Tocqueville for a parliamentary committee considering the abolition of slavery in the French colonies:

> ...I have not tried to be eloquent; I have even carefully avoided irritating the colonists (les colons) which has not prevented their newspapers from lavishing much abuse on me. But you know what colonists are; they are all alike, to whatever nation they may belong. They become raving madmen as soon as one speaks of justice to their negroes.

Time prohibits me from further indulgence and this is just as well, because I should not like to be guilty of

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the speechwriter's professional vice.

III.

Almost certainly Tocqueville would have cared little for his present status as oracle. He would have preferred to be honored otherwise. For the mark of a thinker who is genuinely influential is the fact that his central problems, techniques of investigation, and overarching theories are being continually criticized and reworked. Despite the frequency with which Tocqueville is cited, surprisingly little has been written on the political theory explicit and implicit in his work. Even among his admirers, the brilliance of his conclusions tends to obscure the destructive method by which he achieved them. My approach to Tocqueville in this paper has two main purposes: first, to treat his beliefs as a body of coherent doctrine, and second, by making explicit his method of empirical investigation. Tocqueville's ideas and operating procedures are to be presented here in terms which I hope will lead to a closer study of his works by political scientists... For he deserves the serious attention both of those who center a traditional political philosophy and those concerned with empirical propositions of political behavior.

In what sense did Tocqueville consider himself a political theorist? Certainly he had no use for abstract philosophies of government. These he thought to be the literary productions of men separated from the bracing pragmatism imposed by responsible participation in the business of government. All general theories, complete systems of legislation, pedantic symmetry, contempt for hard facts, pride in constructing altogether new constitutions on the basis of logic alone--these were as much anathema to him as to Burke, whom he praised for just that practical wisdom which some men can acquire spontaneously by living in a free country. But Burke's work did not fully satisy the standard Tocqueville set for la grande science du gouvernment. This should achieve "the clear perception of the general direction in which society is moving, an awareness of the trends of mass opinion, and the consequent ability to forecast the future." Burke, he thought, applauded the Old Regime without having discerned the fatal errors it had made; he regarded the Revolution; not as the natural product of emotions and ideas long in preparation, but as the victory of an artful insurrection. Worst of all, Burke had

failed to see that what he called the ancient common law of Europe, was finished as a system of political legitimacy.

Thus Tocqueville placed much emphasis on the prediction of trends. What the political theorist can do is limited by the context and developments of his time. But this does not render him impotent, for within these limits, men have a broad range of choice. The theorist must deal with the operative ideals of his time, analyze their component parts, and possible internal contradictions. For without this intervention of reason, human institutions are so inconsistent that they may be destroyed simply by consequences which follow from the disparate principles on which they are based.

Consider the fateful error made by the French during the Old Regime. By the time they began to acquire the taste for liberty, they were already encumbered by a set of political theories quite incompatible with free institutions. Their ideal of government consisted of an all-powerful bureaucracy on the one side combined on the other with a legislative assembly that held all the rights of sovereignty. Thus while the nation in form ruled itself, in fact, the individual citizen was to be kept at the end of a tight leash. It is this type of contradiction which if it had been exposed by some political theorist, and brought to public consciousness, might have prevented France's endless alternation between attempts at free government and those disastrous revolutions which then make her ready to accept a master.

Tocqueville's program as a theorist was stated early:

> ...To educate democracy, to reawaken if possible, its religious beliefs; to purify its morals; to mold its actions; to substitute a knowledge of statecraft (la science des affaires) for its inexperience, and an awareness of its true interest for its blind instincts, to adapt its government to time and place, and to modify it according to men and conditions.
>
> A new science of politics (une science politique nouvelle) is needed for a new world.

This was a disinterested pragmatism. Other theorists he judged by their contribution to his task. Thus while writing the Democracy, he used Pascal, Montesquieu, and Rousseau every day. But at the same time, he wrote a friend:

> I send you Aristotle. If you can draw more from it

> than I, please pass on your ideas. For my part, I must say that, apart from the respect due those admired for more than 2,000 years, it is a little too antiquated for my taste. We are not sufficiently Greek to profit much by such books.

In his correspondence with Gobineau, Tocqueville again and again stressed the practical consequences of ideas.

> In the course of studying the German language, I have not become so German that either the novelty nor the philosophic merit of an idea can make me oblivious to its moral and political consequences.

As a political theorist, Tocqueville was engaged in two separate but related enterprises: the exposition of his own ideas on how liberty, equality, and justice were to be realized in his age; the second, the determination of the general rules governing this type of society, and the forecasting of significant trends in its development.

IV.

What was Tocqueville's political position? Was he a Liberal? This is a question I should have preferred to omit, for like not a few others, I feel that further debate about the meaning of Liberalism and Conservatism has ceased to be profitable. More than a hundred years ago, Tocqueville did much to make this discussion obsolete. Calling himself a "liberal of a new species," he attempted to bridge the differences separating those who valued liberty, justice, and legal equality from the others who identified themselves as the party of order, religion, and tradition. Thus Tocqueville blended allegedly disparate doctrines in a way that now seems very modern only to those who take their view of Liberalism from the accounts of oversimplified textbooks. Tocqueville's new liberalism was speedily assimilated. Asa Briggs reminds us that "liberal conservatism" and "conservative liberalism" were already cliches a century ago. During the debate on the Second Reform Bill of 1867, two speakers for and against the bill on successive nights both based their case on Tocqueville. For the generation of Tocqueville and Mill, eclecticism was the rule. Certainly this is true of Mill's essays on Coleridge and Bentham. And as more research is done on the actual functions of government in the nineteenth century, Dicey's distinction between individualism and collectivism becomes increasingly less plausible.

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I, for one, can see no clear-cut definitions of Conservatism and Liberalism that will stand close scrutiny. A whole generation of liberals have discovered the stereotyped antitheses between authority and liberty, leadership and democracy, tradition and innovation.

With this disclaimer, I shall proceed to describe the articles of Tocqueville's belief as I understand them. His ideal was a "balanced, regulated liberty, held in check by religion, custom, and law." He never attempted to provide a philosophical justification of liberty beyond saying that the acts of human societies like individuals have significance only when they are free. The taste for liberty defies analysis. It can be understood only by those who have felt its attraction. What has made so many men stake their all on liberty is its inherent charme, apart from all practical benefits.

> For only in countries where it reigns can a man speak, live, and breathe freely, owing obedience to no authority, save God and the law of the land.

Tocqueville, however, felt that he could demonstrate that a government dedicated to the defense of liberty and human dignity could develop human qualities obtainable from no other regime. Political freedom develops an unparalleled sense of reality, of manly self-confidence, it creates reciprocal ties, and a feeling of solidarity between all the members of a nation. Yet it does not necessarily make them all alike. It is only government by dictatorship that in the long run destroys diversities. This is Tocqueville's mature judgment after experience with Napoleon III, and supersedes what he had said earlier in the Democracy.

Tocqueville almost always treats men, not from the point of view of an abstract human nature, but as shaped by social structure, political and religious institutions, and national character. Yet his letters reveal a balanced view of human nature and the possibilities of education. Men are neither very good nor very bad. To participate in a liberal democracy such as he favored, they must be better educated, and when they are, a large majority of them can be influenced by a well-directed appeal to their natural honesty and good sense. In short, they should be treated as men. Tocqueville remarked that even despots do not deny the merits of freedom. But they claim that no one else is worthy of it. Hence a man's admiration of absolute government

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is proportionate to the contempt he feels for his fellows:

> Man with his vices, his weaknesses, and his virtues, strange combination though he be of good and evil, of grandeur and of baseness, is still, one the whole, the object most worthy of study, interest, pity, attachment, and adoration in the world; and since we have no angels, we cannot attach ourselves to anything greater or nobler than our fellow-creatures.

Tocqueville's view of human nature is closely connected to his philosophy of history and his faith in reason. In no sense was he committed to a fatalistic theory of history. Although pointing out the dangers of certain tendencies in modern egalitarian societies, Tocqueville never said that those tendencies, if discovered in time, might not be resisted, and these dangers, if foreseen, could not be averted. For his part he wished society to confront the perils of democracy resolutely and to be alarmed only at what it could not perceive clearly. Men are neither altogether independent not entirely free, but within their limits they can choose servitude or freedom, knowledge or barbarism, prosperity or wretchedness.

Nothing seemed more hateful to Toqueville than absolute and unlimited power, of whatever kind. An ominpotent centralized bureaucracy in government, or an unfettered tyranny in society were what he most feared, and much of his ingenuity went into the search for means of limiting power. His admiration for the role played by the American judiciary on the one hand, and the legal profession on the other stems from this concern. But many of his detailed proposals such as decentralization and local self-government no longer seem very impressive. Tocqueville's exaggerated admiration for the devices of the American Constitution caused him to stop short of solving the problem of how to control a bureaucracy in a modern democratic state. But he may perhaps be forgiven for not having succeeded in what has baffled his successors. His formulation of the problem is in any case adequate. He wanted an energetic and powerful central government for France. Its position in Europe would permit nothing less. But he wished that the scope of this central power be clearly defined, that it be limited to its own sphere, and that iy always be subordinated to public opinion as represented in the legislature. At the same time, much more responsibility should be delegated to the municipal powers. Under such a government, he thought that the majority of the nation could participate in political life and rights be widely extended.

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But Tocqueville's real strength is not to be found in any one of his suggestions. It comes in his liberation from all preconceptions about tje importance of the form of government or the number of rulers. Within limits, he is willing to recognize that the form political liberty takes will vary depending upon the structure of a society, its political constitution, and its moeurs, or customs. A certain kind of liberty existed under constitutions that were formally despotic; this stemmed from the moeurs. Quite apart from such institutional checks to the royal power as the prerogative of the aristocracy, there were compulsive internal images imposed by religion, custom, prejudice, and public opinion which limited the power of kings. Although they had the legal right, they seldom had the desire to behave arbitrarily.

Tocqueville, after surveying the American constitution, found a suggestive set of formal checks on government. What was left for him was the problem of finding informal checks outside the government which would perform functions equivelant to those just analyzed. These he discovered in the principle voluntary associations, and of interest, properly understood, as the unifying principle of such associations. What are now called interest groups struck him as being extraordinarily significant. For one thing, it enabled otherwise isolated citizens to act together in mutual defense of their rights and interests. And this seemed to him a great improvement upon the terrible isolation of individuals and groups under the Old Regime which by its policy of divide and conquer had killed off all spontaneous political and social life. Thus Tocqueville became an advocate of a highly-developed freedom of association, a right then in disfavor in his own country. He conceded that in extreme emergencies this right might have to be curtailed, but he siad in a phrase that surely anticipates Sir Isaiah Berlin's inaugural lecture, "I can understand that it may be advisable to cut off a man's arm to save his life, but it would be ridiculous to assert that he will be as dextrous as before."

Tocqueville's enthusiasm about the prosaic American trait of enlightened self-interest is at first difficult to understand. It is clear that his own sympathies were with generosity, altruism, and a disinterested public service. But so relieved was he to find an effective counterpoise to governmental power in such associations united by group interest, that he became almost rhapsodic. Another advantage he attributed to the interest group was

the fact that by bringing men together, it helped overcome the "individualism" of democratic societies, the tendency to withdraw from public life to a small circle of family and friends. Enlightened self-interest also provided a source of order in society. It will soon appear, while discussing his theory of religion, that Tocqueville believed that if political authority is relatively loose, some other means of holding in check men's wills must be found. Enlightened self-interest is a kind of secular asceticism (as Max Weber was later to point out). Suggesting every day small acts of self-denial, it produces a discipline that has political utility. Such are the habits of temperance, moderation, and self-command.

Tocqueville's emphasis upon the indispensable political functions of religion was, he thought, a distinguishing trait of his Liberalism. His thought on this point applied what now would be called the sociology of religion to politics. Faith, he stated, is the permanent state of mankind while unbelief is an accident. When religion ceases to dominate men, the effect is not to create a vacuum or a state of apathy, but rather the opening for a whole host of new secular ideals. These are not bad in themselves. Indeed Tocqueville commends the unselfishness of the first pahse of the French Revolution. But in a period of profound change, it is dangerous to scrap both religious and rational institutions at once. Religion, therefore, Tocqueville thought necessary if the requisite minimum of equilibrium were to be maintained. Otherwise, men became déréglés, a phrase that anticipates Durkheim's Anomie.

But Tocqueville added the proviso that if religion is toperform both its own function and to be beneficial politically as well, then it is necessary that there be a complete "separation of Church and State." Otherwise the church, once involved in political struggle, inevitably becomes the object of the strange passions engendered by the conflict of material interests.

In the field of economic activity, Tocqueville felt that the largest possible margin should be left to individual action. He believed that private property was an institution essential to a free society and that the socialism of 1848 was based on ignorance of economics. Yet on this point, his loyalty to his English friends, Senior and Greg, faltered. For not only did he foresee and fear the

development of an aristocracy of wealth, but his mode of analysis revealed to him that it is impossible in the long run for a political democracy to deny its citizens a high degree of economic equality. Finally, his deep opposition to iron laws, whether of wages, race, or anything else led him to speculate whether after all there could not be a social system without private property.

The last aspect of Tocqueville's thought to which I shall refer is his exaltation of the individual and his rights. He knew well that aristocratic ages had made improper use of the notion that private rights ought to be respected, and that by such a rationale, the mass was often sacrificed to the individual. But precisely the opposite danger, he thought, exists in a democratic age. Government is more centralized and efficient; society, stronger and more active than the individual. Man became less attached to private rights just when they ought to defend them. For modern man everything that exalts the individual is healthy; but everything that magnifies genera and ascribes a separate existence to species is dangerous. And so Tocqueville concluded:

> It is therefore in the present democratic age that the true friends of the liberty and greatness of man ought constantly to be on the alert to prevent the power of government from lightly sacrificing the private rights of individuals to the general execution of its design... The reason is plain: if the private right of an individual is violated at a time when the human mind is fully impressed with the importance and sanctity of such rights, the injury done is confined to the individual whose right is infringed; but to violate such a right at the present day is deeply to corrupt the manners of the nation and to put the whole community in jeopardy because the very notion of this kind of right constantly tends among us to be impaired and lost.

I do not know whether this passage is consistent with Liberalism or not. I do not know whether Tocqueville's view of human nature, his philosophy of history, his welcoming of diversity, and the freedom of association and religion are Liberal. I do not know whether his advocacy of the separation of church from state is consistent with that title, or his fear of an aristocracy of manufacturers. But it is my firm conviction that precious few of his ideas need be discarded by anyone who takes pride in the name of Liberal. And if any Conservative, new or old, want to ride on this platform, I should defend their right to be sold a ticket.

23

BUREAUCRACY IN TRANSITIONAL SOCIETIES:

POLITICS, ECONOMIC DEVELOPMENT AND ADMINISTRATION

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INTRODUCTION. Residence in Southeast Asia and travel through a dozen intervening countries is disruptive of normal communications and so it was not until my arrival in the United States late in August that I received the invitation -- sent much earlier -- to present a paper at this meeting. My notes and documentation are still in transit so I cannot prepare a statement adorned with the usual scholarly apparatus and bejeweled with facts, footnotes and statistical tables. Nevertheless, the impressions formed during two years of residence, research and reflection in Thailand and the Philippines are sufficiently vivid to embolden me to present for your consideration several hypotheses concerning the role of bureaucracy in the "new" countries of the non-Western world, or what I like to call "transitional societies." In so doing I shall draw rather freely upon a number of ideas already recorded in some articles I prepared for publication in the Philippines.

These hypotheses seek to correlate the bureaucratic role with: 1) variations in the political setting of the bureaucracy; 2) changes in its economic environment; and 3) its administrative performance.

In formulating these hypotheses I have necessarily drawn most on my own observations in Thailand and the Philippines, but I believe they are applicable also to other countries. Indeed, I hope that my colleagues in this panel will help test the extent to which these propositions apply outside Southeast Asia.

Although my reasons for going to these two countries are partly fortuitous, Thailand and the Philippines provide a neat starting point for comparative analysis because they illustrate polar extremes in a larger developmental continuum.

The Philippines is one of the very few non-Western countries which has successfully employed peaceful political methods to oust a government and place the opposition in power. This phenomenon is associated with a relatively powerful Congress, quite well developed political parties, substantial protection for civil liberties and a free press, significant growth of voluntary associations, and by no means negligible industrial and commercial development.

In Thailand, by contrast, the political structure outside the bureaucracy is notably weak, the National Assembly a powerless captive of the "Government," the monarchy an honored but politically weak remnant, associations in embryonic stages of formation, the economy predominantly agricultural, fairly commercialized but with only the beginnings of industrialization. Although changes of Government have been frequent, they have all been accompanied by a show -- or threat -- of force by segments of the bureaucracy, specifically the military bureaucracy. (I recognize that some writers mean only the civil bureaucracy when they say bureaucracy, but I think it more useful to use the term in its wider sense to cover all hierarchically organized public officials in whatever service.)

Transitional Societies. Both the Philippines and Thailand, however, in a broader sense share the characteristics of what we popularly call the "underdeveloped countries." In the sense that these countries are economically intermediate between traditional agricultural subsistence economies and modern industrial "developed" economies, it is convenient to refer to them as transitional societies. Obviously there are different degrees or stages of transition, and each country has its own unique qualitative differences from others, its distinctive developmental history, cultural, religious and ethnic patterns, its own geographic characteristics. The transitional features, however, give us a significant common denominator for comparative analysis.

The larger continuum, between traditional and industrial societies is one whose implications for politics and public administration I have tried to suggest elsewhere.* What I was unable to work out in

* "Agraria and Industria," in William Siffin, ed. Toward the Comparative Study of Public Administration. (Bloomington, Indiana University Press, 1957)

that paper and now wish to discuss -- in the light of my Southeast Asian observations -- is the proposition that some characteristic features of a transitional society differ qualitatively, in significant respects, from their counterparts in both traditional and industrial societies.

We cannot understand the typical transitional society as merely an "acculturated" traditional one, as a folk culture with a few added gimcracks. "Agraria," as I characterized it in my paper, is today extinct, for all practical purposes. The value of its analysis may be found in its utility as a starting point for the analysis of transitional societies, and as a model for the interpretation of historical materials, but not as a description of any contemporary scene.

By the same token the transitional society cannot be properly understood as merely one that is partially industrialized, or differentiated, and marked by an array of "culture lags." The fact of limited economic development reflects conditions and causes reactions qualitatively different from those to be found in the Western industrialized countries. (For this reason even the phrase "transitional

society" is somewhat misleading because it fails to suggest strongly enough the distinctive qualitative features of these societies. It also implies a false teleology, a kind of determinism of industrialization. In fact world industrialization raises problems which no contemporary society can avoid confronting, but it seems quite possible that some countries may enter a stage of relatively permanent "underdevelopment" or "transition." Hence I have proposed elsewhere a new terminology, replacing such terms as "transitional" or"semi-differentiated" with "prismatic."* An underlying analogy with light

* "Model for the Study of Philippine Social Structure," (mimeo.) Manila, Institute of Public Administration, 1959.

and the use of a functional-structural typology, gives "fused" as a term for the functionally diffuse but structurally simple traditional society, and "refracted" as a term for the functionally specific and hence structurally complex industrial society. Although I prefer the term "prismatic" as a precise way of designating the transitional society, I avoid it in contexts where rapid communication is more important than exact denotation.

The Sociological literature is voluminous on the contrast between Gemeinschaft and Gesselschaft, status and contract, un-differentiated and differentiated, folk and urban societies. What seems not to have been sufficiently studied are the transitional problems, the qualitative changes, which accompany the shift from the first mode of existence to the second.

For the general study of Comparative Politics, moreover, such a study of the problems of transition promises some new insights. Hitherto Comparative Government has been largely concerned with the different ways in which the relatively industrialized, Western countries, have sought to deal with their political and administrative problems. From a developmental perspective, however, these differences appear less significant. They may be relatively equivalent alternative ways of institutionalizing solutions to a set of problems which have much in common.

The political characteristics of the "underdeveloped" countries have usually been classified in terms of the institutional typologies of the "developed" countries, i.e. as presidential or parliamentary, democratic or totalitarian, federal or unitary, etc. I think such typologies may well miss some of the most significant features of these political systems. We need, rather, to employ a typology which classifies the transitional societies in terms of their own most significant problems or characteristics, at the same time that it relates them in some meaningful way to the more industrialized societies.

In order to illustrate more concretely these necessarily abstract introductory propositions, I shall now present three hypotheses which seek to relate bureaucratic power and performance to the political structure and economic condition of its environment, and its own administrative output. In each instance the bureaucratic role is not just intermediate between the corresponding role of bureaucracies in traditional and highly industrialized societies, but exhibits characteristics of its own.

A. BUREAUCRACY AND POLITICAL POWER

The weight of bureaucratic power tends to vary inversely with the power of non-bureaucratic groups.

Non-bureaucratic power, as compared with bureaucratic power, seems to be relatively strong in both modern industrial societies and traditional agricultural societies. In transitional societies, however, the organization of non-bureaucratic power tends to be relatively weak and, correspondingly, bureaucratic power is greater.

When non-bureaucratic groups -- parliaments, political parties, pressure groups, public opinion, etc. -- are quite powerful, for example, they are able to hold the bureaucracy accountable, to compel it in large measure to carry out their demands. Hence it is realistic to think of the bureaucracy as a largely instrumental apparatus, as politically "neutral," as predominantly a machine for public administration, not as a political force.

We have become so accustomed to thinking of the bureaucracy in this instrumental sense that few of us devote much time to an analysis of the political role of bureaucracies. We have, of course, our popular writers who love to make the "Wonderland of Bureaucracy" an object of ridicule and abuse but, apart from my colleague, Charles Hyneman, it is hard to find any political scientists who have seriously considered the power role of bureaucrats.

If we assume -- for the moment on a purely conjectural level -- a condition in which non-bureaucratic groups are unable to exercise any coherent or effective control over an established bureaucracy, we should then witness a state in which the bureaucracy becomes, through default, the main political force. Such a condition, intimated in the writings of Max Weber, may be conceived of more as a product of the weakness of non-bureaucratic power than as a fruit of inherent bureaucratic strength.

Granted that such a hypothetical kind of bureaucratic power might exist, does it in fact ever occur in real life? Certainly not in the modern West. In the democracies, non-bureaucratic political groups, whatever their weaknesses, are able in large part -- though never fully -- to keep the bureaucracy under control. Even in the totalitarian states non-bureaucratic power, especially as embodied in a dominant exclusive party, exercises substantial -- though perhaps not quite so effective -- control over the state bureaucracy. (We must bear in mind here that, although I use the word "bureaucracy" broadly to cover both military and civil officials, I am also using it narrowly to refer only to public officials, not to private bureaucracies, including those of political parties.)

If we turn, now, to the traditional societies, we find on the one hand in feudalism, such as that of Medieval Europe, state bureaucracies that were extremely weak, even embryonic, as compared with the power of hereditary aristocratic families, the organized Church, the gilds, etc. Even in the Oriental empires, where bureaucracies were more highly developed, the imperial establishment above and the

gentry below always exercised considerable control over bureaucratic power -- though perhaps here bureaucrats exercised more power than in the other instances we have cited so far.

Weakness of Non-Bureaucratic Power. When we turn to the contemporary transitional societies, however, we discover situations in which non-bureaucratic political power is weak to an unprecedented degree. We have many case studies in different countries to demonstrate this weakness, though we have few studies of the effect of this weakness on bureaucratic behavior.*

* I tried to explain some of the reasons for this political weakness, and its administrative consequences, in "Politics, Policies and Personnel," Occasional Paper no.1 (Manila, Institute of Public Administration, 1959)

On the one hand the power of traditional groups, the monarchy and the gentry, the chieftainships and communal elders, has been largely -- though by no means completely -- eroded away. On the other hand, the power of new groups -- political parties, parliaments, pressure groups -- is by no means negligible, but it remains weak in comparison with bureaucratic power.

One reason for the weakness of non-bureaucratic power becomes more apparent if we look specifically at its formal aspect, i.e. the basis of authority, the source of legitimacy in government. It is, after all, the voluntary acceptance of legitimate authority by the mass of any population which makes effective government feasible. Rulers who must depend on naked power to coerce the ruled generally find their regime both costly and insecure.

Typically in a transitional society we expect to find the traditional bases of authority seriously questioned and undermined. If not actually removed from office, remaining kings and chiefs hold largely empty ceremonial functions; they reign without ruling.

At the same time the new bases of authority, resting on ideas of popular sovereignty, majority rule, democracy and universal suffrage are but imperfectly understood and accepted by fractions of the population. Even intellectuals who give them greatest lip-service may do so only when they promise to advance their own private ambitions thereby.

Effective power, then, is often held by those who have access to important levers of control. However much they may seek to cloak their exercise of power by a mantle of legitimacy -- utilizing both traditional and modern symbols of authority for this purpose -- they rely ultimately upon more direct weapons. Such power holders may exercise their control openly or secretly, as charismatic leaders or as political "bosses." Hence a salient feature of politics in the transitional society is its "formalism," a wide discrepancy between the law and the practice, authority and control, formal and effective power, the open and the secret, the overt and the covert.

Implications of Bureaucratic Power. The same discrepancy between theory and practice marks bureaucratic behavior in transitional societies. Resources entrusted to officials as a public trust, as means for public service, may be utilized as weapons for power, as stakes for private gain. Bureaucrats, especially those in the top echelons, become enmershed in a complex, ambiguous game. The shiny "head" of the coin is the official role of public administration, but its dark "tail" is the secret struggle for power.

This is a pervasive struggle that goes on quietly and behind closed doors. Unlike the open political struggle of a democratic industrial society where final decisions may be made by public ballot or parliamentary division, this is a hidden struggle where crucial decisions are made through appointments to key jobs, budget manipulations, and re-organizations. Control over territorial administration, tax revenues, promotions and transfers, machine guns and tanks, are decisive weapons of power. Only when a military group effects a sudden shift by force does the bureaucratic struggle come partly into the open, just as the occasional flash of flying fish suggests the teeming life below the turbid surface of the sea.

It is necessary here to stress a distinction between the politicization of a bureaucracy and partisanship. Officials may be said to be partisan if they are identified with one of several competing political parties. If there is only one political party, all bureaucrats might be compelled to serve it. They might be quite political but would not be called partisan. Similarly, if there are no political parties, or the formal parties are powerless, there would scarcely be any incentive for officials to identify with one of them. Nevertheless, such officials might be embroiled in deep-seated intra-mural struggles which could only be characterized as "political" although not partisan.

For bureaucrats to be politicized, moreover, does not imply their involvement in issues of public policy. Indeed, such issues can arise only when groups espousing rival policies form, and have available media through which to inform the public and create opinions. But where non-bureaucratic power is weakest, public opinion is least formed and articulate. Hence the bureaucrat has no framework within which to inject his own policies or proposals as part of a public debate. Such participation in public policy-making presumably becomes possible only to the extent that non-bureaucratic politics develops.

Bureaucratic politics, therefore, takes predominantly the form of rivalry for the direct attainment of specific advantages -- promotions, salary increases, budget allocations, security of tenure, "fringe benefits," license to slackness and exploitation of one's position for profit-making.

Bureaucratic power does not produce bureaucratic solidarity. The organization of bureaucrats to present a common front for their demands takes place only when bureaucratic power is seriously threatened, when non-bureaucratic power seeks to bring the officials under control, to make them accountable.

The implications of bureaucratic power, then, are not efficiency

and drive, but rather corruption, inertness, and pervasive internal struggle, marked by the formation of cliques, alliances and alignments, feuds, coups and passive resistance.

If we think of power in terms of participation in a decision-making process, it is apparent that while one variable --and the one we usually think of -- is the degree of participation, a second variable is the extent to which decisions are made, i.e. the quality of the decision-making process itself. In some situations more decisions are made -- in terms of number, speed, and decisiveness -- than in others.

Bearing this in mind, we may say that, although a large proportion of the governmental decisions which are made in a transitional society are heavily influenced by bureaucratic participants in the process, the level of decision-making itself is low. Policies for the guidance of officials are often poorly formulated, and frequently what looks like a policy is in fact only a formalistic declaration of intent which remains unimplemented or unenforceable. If bureaucratic power prevails over non-bureaucratic power in a transitional society, this does not mean that such power is well organized or channeled. Indeed we encounter an apparent paradox that bureaucracies in highly industrialized societies, which exercise relatively less power than other groups, seem to be "strong" because they participate in the making of a large number of far-reaching, enforced decisions.

The signs of bureaucratic power, on this showing, are quite different from the signs of non-bureaucratic power. For non-bureaucrats, the significance of power lies in one's ability to compel the bureaucrats (the government) to fulfill one's demands. Hence non-bureaucratic power tends to be seen as program or policy-oriented drive, as ability to formulate realistic objectives and secure their implementation.

For bureaucrats, however, the significance of power lies in their ability to do as they wish, i.e. to avoid having to do what the non-bureaucrats want them to do. Hence the signs of bureaucratic power are lack of drive and strong program orientation, passivity, corruption, complacency. When we find bureaucrats exerting themselves to struggle for adoption of a particular public policy, this is a sign of the power of non-bureaucrats, an indication that bureaucrats are compelled to try to influence decisions by non-bureaucrats.

If this is so, one might well ask how bureaucrats could ever bring themselves to organize effectively enough to take power. I think the answer is that they do not. Bureaucracies are not self-creating. Rather, bureaucracies are built to serve non-bureaucrats. But the institutional stability of bureaucracies may be greater than that of their non-bureaucratic masters. And this is particularly so in transitional societies where the non-bureaucratic rulers of traditional times have lost their power even as they were in the process of infusing new life and vigor into their bureaucracies. Bureaucratic power flourishes only saprophytically, on the decayed remnants of non-bureaucratic power.

Finally, it should be apparent that the phrase "bureaucratic power" does not refer to any power role of all bureaucrats in a government considered as a whole, but rather to the power role that

individual bureaucrats, as members of a favored group, are able to exercise. However, it should also be apparent that the power of individual bureaucrats varies widely. Certainly the higher the rank and authority of a bureaucrat, the more likely it would be that he could exercise considerable power. Similarly bureaucratic power would vary with the function exercised. Officials in some departments -- military, financial, personnel -- might well exercise much more power than those in others -- agriculture, education, health.

The Thai and Philippine Examples. What has been said of the bureaucratic role in transitional societies can be demonstrated, I believe, in both Thailand and the Philippines. Moreover, differences between these two societies may be correlated with differences in the role of their bureaucracies, and hence illustrate the range of variation in bureaucratic behavior in transitional societies.

The relatively greater weakness of non-bureaucratic groups in Thailand is reflected in the relatively greater power of its bureaucracy. Correspondingly, we are not surprised to discover intra-bureaucratic rivalry as the major ingredient in Thai politics, i.e. a continuing struggle between high-level officials for power, prestige and the wealth which accrues to those who succeed in the power struggle. The military coup comes as a dramatic culmination of this struggle, followed by a general shifting of positions among the top contenders, and minor adjustments in influence, if not in position, among lower lefel officials.

The significance of governmental policies for the general population remains relatively low, as measured by the indifference and even ignorance of the mass of the population of the changes which take place. A large part of the rural economy remains close enough to a subsistence base so that it is little affected by governmental policies or lack of policies.

By contrast, political groups in the Philippines are much stronger. The Congress is a major power center, and political parties play roles of fundamental importance in the organization of power. Though alarm about a possible military coup is sometimes expressed, there seems to be no real danger of a disruption of constitutional procedures.

The extent to which bureaucrats feel threatened by this situation is reflected in the organization of public employees associations which have been active in lobbying for civil service legislation to recognize and extend their rights and privileges. A major corollary of this development seems to be the extent to which intra-bureaucratic struggle is implicated in the struggle between and among politicians. What differentiates this struggle from the comparable contests which take place in any highly industrialized country is the degree to which the goal of struggle isnot so much the choice of general policies of wide public concern -- or the making of appointments expected to influence such policies in predictable ways -- as the making of appointments and budget allocations as ends in themselves and as ways of strengthening or weakening particular individuals, families, cliques and groupings.

In the Philippines one hears much more criticism and discussion of the behavior -- or misbehavior -- of public officials than one hears in Thailand. This by no means indicates that the Philippine bureaucracy is more corrupt or powerful than its Thai counterpart. Rather, it suggests the degree to which the public, and specific non-bureaucratic groups, are trying to bring the bureaucracy under control, to make it fully accountable. But more thantthat, it also indicates the relatively greater degree of economic development and the decline of the subsistence economy in the Philippines, so that a larger number of government policies must be made and their execution -- or non-enforcement -- correspondingly affects a larger number of people.

A rather striking contrast between the Thai and Philippine government may be observed in the way local government is organized. The Siamese have a highly centralized system, somewhat like the French, under which the Ministry of Interior appoints an army of district officers and provincial governors who, in a regular career service, marked by frequent rotation of positions, patrol the entire country. In contrast the Philippines has adopted something like the American system with locally elected municipal (county) mayors and provincial governors.

A superficial impression of these two systems would be that the Thai system works much more smoothly and effectively than the Philippine -- fewer complaints are heard and there is less discussion of how the system might be changed or improved. The true significance of the difference lies deeper, however. The Thai system is strictly bureaucratic, and the problems it seeks to cope with are minimal. Although new and specialized public services are spreading in Thailand,the territorial administrator still has under his control a society which is largely self-contained, and which has produced few power centers to challenge his supremacy. Hence the difficulties of his position -- which should, of course, not be under-estimated -- nevertheless remain minimal for a transitional society. Hence the apparent smoothness with which Thai territorial administration functions.

By contrast the Philippine "territorial administrators" are elected politicians. They are non-bureaucratic officials. They represent a new form of power which is only in its first stage of development in transitional societies. Small wonder that they encounter major problems in establishing their roles. Moreover, all the functional departments -- save for the police -- remain substantially under the control of central, bureaucratic departments. The elected official, consequently, faces a major struggle with bureaucratic power in his own territory.

The very fact of elections and the relatively greater degree of economic development, moreover, mean that the problems to be solved in a typical Philippine locality are more complex and difficult than those which face a Thai locality. Given this background it is small wonder that the non-bureaucratic local official in the Philippines has a more difficult time than the territorial administrator in Thailand who is backed by a powerful central Ministry of Interior.

B. BUREAUCRACY AND ECONOMIC DEVELOPMENT

The profit-making role of bureaucrats tends to vary directly with the weight of their power.

In transitional societies where, as we have argued above, the weight of bureaucratic power is relatively great, profit-making by bureaucrats also tends to be considerable.

Traditionally we have thought of the business man as an entrepreneur in the sense that he exercises both a risk-taking and a managerial function in business. In a modern corporation, however, we discover a formal separation between the risk-taking, profit-making element of "ownership," of venture capital, and the managerial element of the employed staff, notably top "management" itself.

In the same way traditional types of bureaucracy often involved both a risk and a profit-making element on the one hand, and a managerial element on the other. In modern Western governments these elements are separately institutionalized and much effort is expended to maintain this separation.

Politics is specialized to risk-taking and administration to management. The profit-making element, however, is presumably removed entirely from the role of politicians and bureaucrats, and is assigned to the private citizen as business man or as enfranchised "share-holder" in the government. In the same way a Board of Directors may take risks but the profits are supposed to be distributed among a corporations share-holders in the form of dividends.

Under these conditions of functional specialization, we have developed a "managerial" approach to public administration, and we think of top public officials as being engaged in the tasks of "management." Here the rational element, with stress on economy and effective output, prevails. Risk-taking and profit-making by the public servant is severely prohibited. A well-organized and controlled bureaucracy, accordingly, is strong in managerial roles but the profit-making tendencies of bureaucrats are minimized. We might formulate the hypothesis that the managerial role among bureaucrats varies inversely with the profit-making role. In a small-scale family enterprise, managerial and profit-making roles are united, but both are developed only moderately. In a large corporation the two roles are sharply separated and both more highly developed.

It should be clear that bureaucratic profit-making is quite different from participation in public enterprises. Indeed, civil servants may be salaried managers of large-scale state industries -- railways, factories, etc. -- withoug making any profits for themselves, or taking any personal risks. The profits and risks pertain to the state and the public as a whole, not their employed functionaries.

In the modern Western industrial society -- whether organized on a free enterprise or a state ownership basis -- the managerial role of the bureaucracy is highly developed, both as regards officials who conduct productive state enterprises, and those who merely administer services which permit and encourage the development of

private enterprise by others. Students of Western governmental systems, consequently, are not familiar with the phenomenon of large-scale, institutionalized profit-making by officials. They therefore scarcely notice its existence save as a minor and infrequent deviation from expected patterns of bureaucratic behavior. Or they see it as "corruption" which can be corrected through moral reform or the introduction of some administrative checks or procedures.

In traditional agricultural societies bureaucratic profit-making was more common than in industrial societies, but even then it was relatively restricted. According to our hypothesis, limitations on bureaucratic power were accompanied by restrictions on bureaucratic profit-making.

In feudalistic types of political organization, bureaucratic structures were minimal. Production and commerce tended to become the exclusive preserve of artisans and merchants, organized into gilds and recruited on patrimonial lines. Their services became indispensable to feudal rulers who protected them and thereby prevented embryonic bureaucratic groups from encroaching on their monopolies.

In imperial bureaucratic polities, the temptations and opportunities for bureaucratic profit-making were, I should think, always greater and posed a continual threat to survival of the bureaucracy and the empire. When officials become entrepreneurs, exploiting their power and prestige to gain personal wealth, it becomes more and more difficult to control and coordinate their activities for imperial purposes, e.g. to maintain the political unity of the empire, to administer essential state enterprises, and to finance the court itself.

Hence, just as imperial bureaucracies had to institutionalize barriers between the family system and bureaucracy to prevent bureaucratic collapse, so they also had to institutionalize barriers between bureaucratic and entrepreneurial activity. The most frequently used means to accomplish this objective was to designate all productive and commercial activity as intrinsically degrading, as low in prestige. Bureaucrats then had to choose between entrepreneurship and high social status. Resultant social contempt for trade and traders continues to the present day in transitional societies.

The degree to which it was necessary to stigmatize entrepreneurship varied with the strength of the temptations to bureaucratic entrepreneurship. These temptations must have varied with the degree of social mobility in traditional societies. Hence a relatively open class system, in which social mobility was encouraged, would stigmatize entrepreneurship most severely and self-consciously, as in classical China. However, in a rigid caste system, where occupational roles were associated with, and monopolized by, specified social classes, a higher prestige ranking for castes specialized in entrepreneurship could be permitted, as was the case in India.

(Strangely enough, the servants of the East India Company, up to the end of the eighteenth century, were little conscious of caste barriers and became more and more entrepreneurs on their own behalf, thus threatening the collapse of the Company's bureaucratic system.

The reforms which the British adopted to turn the Civil Service into a caste as well as a bureaucracy reflected a recognition of the requisites for bureaucratic survival under Indian conditions, not something inherent in British society.)

The Transitional Society. If the situation sketched here for both traditional and industrial societies is valid, it would not prepare us to anticipate the major qualitative change which we observe in transitional societies where bureaucratic profit-making is commonplace. We find something, in other words, which is not merely half way between the traditional and the industrial, or can be suggested by terms such as "semi-differentiated," "semi-industrialized," or "underdeveloped." Rather, we have here a significant structural change which can be accounted for on such grounds as the following: Members of every bureaucracy are subject to many opportunities and temptations to exploit their power and prestige for private gain. In both traditional and industrial societies, although by quite different mechanisms -- involving both value systems and control devices -- these tendencies are kept under control. In transitional societies however, the traditional restraining mechanisms are undermined more rapidly than they can be replaced by the industrial restraining mechanisms.

The weakness of non-bureaucratic power is the most obvious condition which makes possible this license for bureaucratic profit-making. I have already discussed the limbo in the formal basis of public authority as a major factor contributing to the collapse of non-bureaucratic power.

The Class Structure and Power. I should now like to discuss another major factor -- changes in the social structure -- which not only undermines non-bureaucratic power but contributes directly to the propensity for bureaucratic profit-making.*

* I have described these changes in more detail in "The Bazaar-Canteen Model," (Manila, Institute of Public Administration, 1959) mimeo.

In the Western democratic industrialized countries -- including those largely populated by settlers from Western Europe -- the growth of the "bourgeoisie," the commercial and industrial "middle class," played a crucial role in development, as is very well known. The rather exceptional character of this course of events, however, is not sufficiently well recognized. Elsewhere, except for Japan, no similar class has emerged from within a society. The role of the bourgeoisie tends, rather, to be fragmented among three quite different and often mutually hostile social groups.

One of these groups is primarily specialized in entrepreneurial activity, but typically has low social and political status. It is often composed of "aliens," minority religious or ethnic elements, or low "caste" individuals, whom we may call "outsiders." As industrial development was launched in modern times, in non-Western societies -- whether under the control of alien colonial rulers or of indigenous elites who recognized the need for development as the price of survival in an imperialistic world -- the outsider as entrepreneur was protected and encouraged to expand his commercial and

productive activities. But while his economic activities increased in scope and volume, social and communications barriers between him and the rest of his society increased.

So long as colonial rule continued, or foreign "concessions" existed, the outsider entrepreneur enjoyed special protection from arbitrary acts of officials. But when foreign rulers were expelled, the outsider or "pariah" entrepreneur found himself in a most precarious position. Although his services were economically indispensable for the development of the economy and society of which he was a part, he remained outside the polity, he lacked the means for formal and legitimate participation in political and administrative processes. He could not secure a regime of law and a framework of public services which would protect and facilitate the development of his entrepreneurial activities. Instead, he had to resort to "informal" and "illicit" means to protect his wealth and his entrepreneurship. Thus while he carried out the economic functions of a bourgeoisie, he could not carry out its social and political role.

The consequences of this situation for bureaucratic profit-making are of great importance. In a democratic industrialized country, the business interest and the organized "public" can hold the administration to account to fulfill a strictly managerial function in establishing the conditions favorable for private enterprise, or in conducting state enterprises for the public interest. In transitional societies, by contrast, members of the business community often appear before government officials in the posture of beggars asking for special favors. The non-business public tends to look with hostility upon the business community, favoring more restrictive and irksome policies against it, and condoning arbitrary and oppressive official acts directed against the entrepreneurs.

As a result many bureaucrats are enabled to acquire considerable wealth by entering into "deals" with individual business men -- extending protection, special favors, tax concessions, foreign exchange allocations, quota rights, etc., in exchange for gifts, kickbacks, and other benefits. Sometimes the official may be asked to become a formal partner of a concern, as by joining its board of directors. Alternatively, officials may decide to go into business on their own account but, lacking managerial skill, they usually have to invite members of the outsider business community to become their partners or collaborators.

Should the government decide to establish state enterprises, some bureaucrats will be able to obtain posts for themselves or their friends in which they can again add to their wealth through control over contracts, purchases and sales, appointments, etc. Thus the entrepreneurial class, instead of providing a basis for non-bureaucratic power which can both demand conditions favorable to development and enforce bureaucratic accountability, cannot organize legitimate political power and effectively undermines bureaucratic accountability.

A second major group, to be found in some but not all transitional societies, may be called the "land-lord" class. Considerable marketization of agriculture and population pressure are both necessary for the emergence of this group. Socially they tend to derive from

traditional, land-owning, aristocratic, chiefly or gentry elements. However, as we have seen, they tend to lose the formal basis for power with the collapse of the traditional authority system with the myths and symbols which once commanded universal respect. Economic changes, the marketization of agriculture, and the imposition of new if precarious legal safeguards for contract obligations, tend to produce a new class of land-lords who profit from direct exploitation of their tenants and creditors. Revolutionary tensions tend to increase and the land-lords turn increasingly to government for protection. Thus the social class which most frequently provides the basis for what little extra-bureaucratic power persists in a transitional society not only rests its power on a precarious formal basis, but tends to use its power in such as way as to increase popular resentments and discontent. As a class, therefore, it stands in the way of increased economic productivity and also undermines the morale and integrity of the public service. The group which fulfills, to some extent, the social and political roles of a bourgeoisie, cannot perform its economic and developmental role.

A third major group may be distinguished. It may be drawn from either of the first two, as well as from other class elements. Its distinguishing mark is a formal higher education based on the experience of an alien civilization, i.e. the Western industrialized societies. In large part this element looks to careers in government service, especially in the bureaucracy, but also in politics, and perhaps in private professional and managerial roles, but not in profit-making entrepreneurship.

Because it avoids entrepreneurship, the intelligentsia cannot play the economic role of a bourgeoisie. Because of its penchant for bureaucratic careers -- and because those who fail to achieve their career aspirations often turn to subversive revolutionary activities -- the intelligentsia rarely provides much support for non-bureaucratic power. We might say that the intelligentsia provide to some extent the social role of a bourgeoisie, land-lords the political role, and outsider entrepreneurs the economic role. But because they are so deeply split against each other, and usually also against the peasant and working mass of the population, they cannot provide an integrated force for political strength and economic development.

Insofar as the intelligentsia fill elite positions in government -- whether within or ourside the bureaucracy -- they tend to promote the goals of nationalism and industrialization. In so doing, they are likely to do battle with both the land-lord and outsider entrepreneur groups, the former because he blocks economic progress, the latter because he stands outside the national community. Unfortunately this stand tends to aggravate the very difficulties complained of. For example, pressure against the outsider entrepreneur makes him more insecure, and hence leads to a flight of capital, and the further concentration of investment on rapid turn-over commercial activities at the expense of more vulnerable long-term industrial enterprise. Consequently the intelligentsia finds outsider entrepreneurship an economic liability as well as a threat to national solidarity. The result is a strong pre-disposition to "nationalization" of enterprise, in both senses of the promotion of nationals as entrepreneurs, and the creation of more state enterprises.

As I have already suggested, both of these policies also facilitate the development of bureaucratic profit-making. State enterprises offer more opportunities to officials to exploit their positions for private profit than do the more traditional type of governmental activities. Encouragement of nationals in business often means assistance to friends and relatives of officials, and aid to ex-officials.

Values, Economic Pressure, and Power. The crisis in power structure and class relationships is reinforced by other factors, such as a crisis in value systems, and direct economic pressures.

Traditional societies imposed a heavy structure of customary obligations and taboos which effectively restrained the worst excesses of greed and lust. Modern industrial societies seek to achieve the same results through a system of law and a universalistic moral code. In the transitional society, however, the old customs tend to wither away and the new rules do not quickly enough take their place. Hence one finds a wide-spread condition of normlessness, in which the libido urges of self-interest are released from effective social control. The resulting crisis in the value system aggravates the gap between social classes described above, interferes with the growth of public-spirited and effective political organization, and, of course, helps the bureaucrat to rationalize his profit-making activities. The rhetorical question of the spoils politician -- "What are we in power for?" -- epitomizes this crisis in values.

Economic conditions also strengthen the tendencies I have outlined. The traditional basis for bureaucracy, for example, probably always had a strongly "prebendary" character, i.e. each official received as a normal part of his office a variety of fees, gifts, tributes, or other contributions over and above his very small official "salary." The system of paying fees for services rendered is familiar to us in our medical practice, but we could equally well put all doctors on a salary basis, dispensing with fees, as in done in Great Britain. We are also familiar with the waiters, guides, justices of the peace, etc., who rely on fees and "tips" for their income more than on their wages or salaries.

The modernization of the bureaucracy in every transitional society has involved shifting from a prebendary to a salaried basis of compensation. Only the salaried basis provides a sufficiently flexible and efficient means of bureaucratic management to make possible provision of the multitude of new technical and specialized services which must be offered by governments in societies undergoing economic development.

But the prebendary system is tenacious and difficult to eliminate. The attitudes of both the public and the bureaucracy itself cannot be quickly transformed, just as it is not easy to abolish the system of "tipping." So long as the public remains willing to give tips, and the functionary to accept it, the system surely will continue. When public services are poorly organized and inadequate, the "clientele" tends to be willing to pay for better service, including the overlooking of infractions of rules and regulations.

Most crucial of these clienteles in the transitional society is,

of course, the outsider entrepreneurial group which not only has the greatest motivation, but also the ability, to pay. Moreover, as outsiders, they do not share the values and loyalties which are held by the dominant community, and hence feel little sense of "guilt" for violating norms which, at best, are not very strong, even for members of the dominant community itself.

As for the bureaucrats, the temptation to accept "favors" is doubly strong, not only because there is weak social pressure against it, and because the political organization to enforce accountability is weak, but alwo because their own salary income remains pitifully inadequate.

This last economic factor, I think, is also pretty universal in transitional societies because everywhere the need for government services, and the corresponding increase in size of bureaucracies, (aggravated by pressure to relieve intelligentsia unemployment) advances more rapidly than the national product. Despite continually mounting tax burdens, national budgets remain inadequate, and must be spread thinly over the growing pay-roll. Thus over-staffing and under-payment are economic aspects of the larger complex which promotes bureaucratic profit-making.

The Thai and Philippine Examples. If we look at Thailand and the Philippines we see virtually classical examples of these tendencies. Significant differences between them reflect differences in their levels of economic development as well as degree of non-bureaucratic political organization.

Thailand is less developed economically. Correspondingly its intelligentsia is proportionately smaller, land-lordism less of a problem, nationalism less articulate, and the alien business community less threatened. Nevertheless, some restrictions on the alien business man in favor of the Thai have been imposed, the need to buy protection is strong, controls over the entrepreneurial activities higher officials weak. Many state enterprises exist and are quite obviously exploited for personal profit by some of their employees. High officials are often associated with private firms, especially on their boards of directors. State-backed enterprises, such as the giant National Economic Development Company, have provided lucrative positions for influential persons at the expense of productivity and efficient management.

In the Philippines the economy is more developed. More Filipinos (an embryonic bourgeoisie) have become successful entrepreneurs and, accordingly, the outsider entrepreneur is under more violent attack. Land-lordism and peasant discontent is correspondingly more acute; the intelligentsia a larger and more restless social force. As a result social ferment is more active, political organization stronger, and pressure on the bureaucrat to become more accountable is greater. Administrative "anomalies" have become a subject of vigorous public criticism and controversy. Nevertheless, it is widely known and reported in the press that officials in many public enterprises and services make substantial personal profits through their official positions.

Many variations in the basic pattern or model of a transitional society can be observed if we survey the various actual non-Western countries. Where the outside entrepreneurial community is indigenous but of minority religion or low caste position, where the dominant political party has been strengthened in discipline and objectives by a prolonged revolutionary struggle, where the land-lord class and/or the outsider entrepreneurial class have been dispossessed by political fiat, entrepreneurial or profit-making tendencies in the bureaucracy can be more sharply restricted. The destruction of a major social group, however, is politically disruptive and is likely to produce near anarchy on the one hand, or a terroristic imposition of naked power on the population, on the other. Thus the profit-making tendencies of bureaucrats in a transitional society may be curbed if a well-disciplined and austere political organization can seize power, but the social and human costs of such a transformation are likely to be staggering.

In concluding this discussion, then, we can point out that, although as a general characteristic, bureaucratic profit-making is wide-spread in transitional societies, considerable variation in the extent and pattern of profit-making can be found as between different countries which we may classify as "transitional societies." The hypothesis offered here is not intended to suggest any rigid uniformity for all underdeveloped countries, but rather to provide a framework within which to compare and interpret some of the more significant aspects of politics and administration in these societies.

C. BUREAUCRACY AND PUBLIC ADMINISTRATION

Administrative effectiveness and efficiency tends to vary inversely with the power and profit-making role of a bureaucracy.

As we have seen, bureaucratic power and profit-making tend to be stronger in transitional societies than in either traditional or modern industrial societies. Correspondingly, administrative efficiency of transitional bureaucracies tends to be lower than in either traditional or industrial societies.

This statement may appear paradoxical because it is apparent that the actual output of administration in transitional societies is much greater than in traditional societies. The services performed by the modern Thai or Philippine governments, for example, are obviously far more complex and larger in scale than the services performed by the traditional Siamese monarchy or the Spanish imperial bureaucracy in the Philippines.

The concept of efficiency must be clearly differentiated from volume of administrative output. The concept of efficiency relates to the ratio between costs and output. The process of development, whether in transitional or highly industrialized societies, is accompanied by the need for more numerous and more specialized public services which means, in effect, substantial increase in administrative output. But this increased output may be matched by a correspondingly even greater increase in costs. The traditional governments, although they offered a very low level of services, were able

to offer these services at a small fraction of the costs of modern government, in the same societies.

The concept of efficiency should also be differentiated from the ratio between the clientele and the population served by a bureaucracy. By a clientele we refer to those significantly regulated and provided for by a bureaucracy; by a population, all the people living under the political regime to which the bureaucracy belongs. In traditional governments this ratio was usually very small, the main clientele being the aristocarcy or oligarchy which constituted the ruling class, including the bureaucracy itself. In a modern industrial society the ratio is very large, the clientele being virtually the whole population. Transitional societies undoubtedly fall at some intermediate point between traditional and industrial societies on a scale measuring this ratio; i.e. the bureaucracy serves a proportionately larger clientele than in traditional societies, but a smaller clientele than in industrialized societies.

To say, therefore, that a traditional bureaucracy was administratively efficient is not to say that it served the general public well -- indeed, it may have done precious little for the general public. The measure of its efficiency is, rather, the ratio of costs to output in providing whatever services it was politically necessary to provide, largely meeting the demands of the court, the imperial and feudal elites which controlled the bureaucracy. The bureaucracy of a transitional society, in serving a larger clientele in proportion to the population, does so at a higher unit cost.

The grounds for this conclusion remain to be shown. To measure administrative efficiency is, under the best conditions, a difficult task, as we have learned in our studies of American public administration. In the underdeveloped countries where the indices for such measurement are relatively more inaccessible, it is even more difficult to reach any sure basis of measurement.

My argument, therefore, is not based on direct statistical evidence, although it derives some support from the testimony of many administrative and economic experts who visit the underdeveloped countries.* The argument offered here is based, rather, on indi-

* I have collected some of these opinions in "Public Administration: A Neglected Factor in Economic Development," Annals of the American Academy of Political and Social Science

rect deduction from the consequences of bureaucratic power and profit-making activity.

If administration is to be conducted efficiently, then officials must give priority to managerial, not power and profit-making, criteria in making decisions. If the objective of action is to produce the largest possible output with minimal cost, and if policies are clearly determined by others so that administrators have only to consider means of execution, and all means, including the personnel involved, are value neutral, then relatively rational and efficient administration becomes possible. When bureaucrats themselves become concerned over the choice of goals and values, and when their personal profit becomes a criteria, surely efficiency must suffer.

When a bureaucracy is highly politicised, officials must be concerned in large measure with building up their own power position, with obtaining support for their own values. Hence appointments and decisions on program activity tend to be made with a view to strengthening the position of the appointer, selecting those who share one's value system, whose loyalty can be depended on, rather than those who have the best technical qualifications.

Profit-making interests of bureaucrats similarly conflict with managerial responsibilities. One can usually make a profit from his organizational position only by sacrificing his organizational obligations. One will buy, for example, not from the supplier who delivers the best goods at a minimum price, but from the supplier who turns over the largest kick-back to the purchasing agent. One may enforce standards only on those who refuse to pay for non-enforcement. One may curtail the time and energy given to official work in order to devote more time and energy to unofficial jobs made possible by the official ones.

The examples cited are, of course, extreme ones, and there are certainly many bureaucrats and even many services in transitional societies which are conducted with a high sense of honor and public responsibility. The difficulties cited are those which can easily occur when bureaucratic power is greater than non-bureaucratic power, and the evidence of many observers points to the frequency of these difficulties in many of the underdeveloped countries.

It should be added, of course, that similar problems are by no means unknown in the most industrialized and most democratic Western countries. What I wish to offer as a point of difference is not an absolute distinction, as between white and black, but rather differences in degree which might be measured statistically, and which are of a large enough order to constitute significant qualitative differences.

Interdependence of Politics. In concluding I wish to say a word about the relation between the study of comparative administration and the study of comparative politics. Because of the rather strongly institutionalized dichotomy between politics and administration which has been created in Western, industrialized societies, we have tended to look for similar dichotomies in other societies. I believe, however, that while we can with some practical advantage separate the study of administration and politics in the United States, it is exceedingly dangerous to try to extend this artificial specialization to the study of government in transitional societies. The result can only be harmful for our understanding of both politics and administration in these societies.

For the specialist in administration, such a narrowing of perspective tends to result in concentration on the formal organization and administrative methods of underdeveloped countries. Yet, if the foregoing analysis is at all near the mark, it should be apparent that no amount of cleverness expended in re-arranging governmental structure, setting up new routines and procedures, revising financial and personnel systems, etc. will get at the root of administrative inefficiency which lies in the political and economic structure of the society. Undoubtedly some marginal benefits can be accomplished

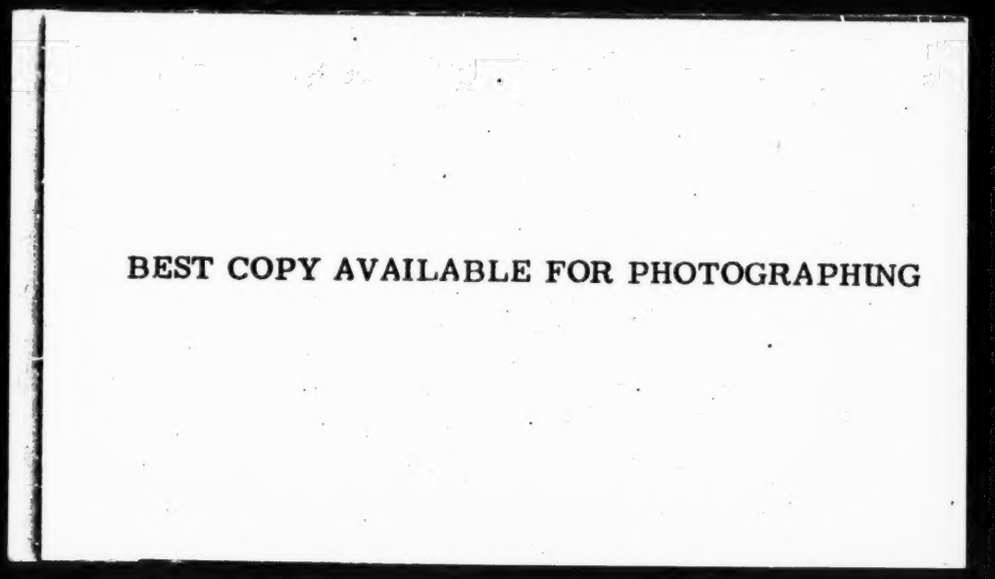
by administrative reform, but they will be significant only to the extent that they accompany parallel changes in political, social and economic structure.

In the same spirit, I find it impossible to understand politics in a transitional society unless we look at the behavior and interests of bureaucrats as well as non-bureaucrats. Of course, the manifestations and consequences of bureaucratic politics are quite different from those of non-bureaucratic politics. Nevertheless, if we study only the non-bureaucrats, we may be looking at only a few of the effective participants in the political process in a transitional society. The political interests of bureaucrats -- including, of course, the military as well as the civil bureaucrats -- may provide a decisive key for the understanding of both the administrative and political behavior of transitional societies.

I would, of course, go even further than this and assert also that economic and social life which, in the modern West, tends to be separately institutionalized, is in contemporary non-Western societies deeply and inextricably linked with political and administrative life. Hence no view of politics or administration there which leaves out of account its economic and social environment can be adequate, any more than an economic or sociological interpretation which omits from consideration the political and administrative aspects of a transitional society can be of more than superficial value.

After we have developed an integrated or "holistic" way of studying transitional societies, we may even reach a stage in our thinking where we shall want to try to recapture a total view of our own society. Our society is sufficiently differentiated, and its separate major institutional aspects sufficiently autonomous so that, for many purposes, we can afford to view each one as though it were a separate, independent system. However, it is my hope that from our study, on a more broadly comprehensive scale, of the transitional societies we will be able to learn not onlysomething of intrinsic interest about these societies themselves, but ultimately we shall also be led thereby to acquire a deeper and truer understanding of ourselves.

THE END


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'BEYOND NIHILISM' IN RECENT GERMAN THOUGHT

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> "Im planetarischen Imperalismus des technisch orgahisierten Menschen erreicht der Subjektivismus des Menschen seine hoechste Spitze, von der er sich in die Ebene der organisierten Gleichfoermigkeit niederlassen und dort sich einrichten wird. Diese Gleichfoermigkeit wird das sicherste Instrument der vollstaendigen,naemlich technischen Herrschaft ueber die Erde. Die neuzeitliche Freiheit der Subjektivitaet geht vollstaendig in der ihr gemaessen Objektivitaet auf. Der Mensch kann dieses Geschick seines neuzeitlichen Wesens nicht von sich aus verlassen oder durch einen Machtspruch abbrechen."
>
> Heidegger[1]

I.

The subject upon which I have been asked to report before this panel is called "Existentialism." To speak of Existentialism requires that one speak of Existentialism in Germany. It was in that country that the movement, if one may use so formal a term, had its origin, and it is there that it has had its greatest impact. Existentialism has presented itself in Germany as, first of all, a transformation of philosophy. The proper application of the term "Existentialism" is, however, uncertain. Heidegger, whose works have been the chief agent of this transformation of philosophy, denies that his "thinking" is now, or ever was, "Existentialist." This denial refers to that Existentialism which calls itself by the name, but it is not limited to a rejection of Sartre. The denial does not necessarily make it pure arbitrariness to refer to Heidegger as an Existentialist. Perhaps the essentials of the Existentialism of those who call themselves Existentialists are revealed by Heidegger through the exposure of the insufficiencies which he feels, after all, forced to undertake. The denial, in any case, does not prevent us from recognizing that Heidegger's thought is worthy of study as the most important contribution to the transformation of philosophy with which we should be concerned. The relationships between Heidegger's thought and the thought of Jaspers, Sartre, Camus, or any of the other individuals commonly called Existentialists, is beyond the limited scope of this paper.

It is perhaps more appropriate, therefore, to speak about a transformation of philosophy rather than about "Existentialism." An analysis of this transformation which is at all appropriate to the seriousness of the subject presupposes an analysis of Heidegger's philosophy, and an understanding of its significance within the history of philosophy. Consequently, an adequate understanding of the relevance or irrelevance of the transformation to political science presupposes an adequate analysis of Heidegger's philosophy. All talk about this transformation in ignorance of the prerequisite partakes of the inconsequential. All talk about this transformation prior to the satisfaction of the prerequisite is, at best, fragmentary, and may very wellqbe inconsequential.

This is not to suggest that the transformation is limited to Heidegger's thought, or even to the thought of the other individuals we have mentioned. On the contrary, the standpoint expressed in the transformation may be far too pervasive to be identified solely with the works of a limited number of philosophers or literary figures. What is suggested is the following: if we are to understand the transformation and, indeed, even recognize its pervasiveness, we must be prepared to study that figure who has dealt withe the central issues in the most sovereign manner.

At this point, my contribution to this gathering might well cease, for it is obviously not possible to present here an adequate analysis of Heidegger's thought. No less absurd would it be for me to state that I am in a position to make my remarks on the basis of an adequate analysis of Heidegger's thought. This will come as an anticlimax only to those who are unfamiliar with Heidegger's stature. We should not need Heidegger to remind us that "it is one thing to determine and describe the opinions of philosophers; it is an entirely different thing to talk through with them what they are saying, i.e., that of which they speak."[2] But even the confrontation of this thought at the distant and secondary remove of the description of opinions is, at least for the present author, a hazardous endeavor, quite aside from the fact that at this distance we are not capable of understanding the problems which the philosopher understands.

By the inclusion of the subject of Existentialism in our program, however, it is indicated that the subject is of relevance to our discipline, even if as an irrationalism that has to be warded off, and that an effort should be made to specify the area of that relevance. How may that task be understood and made approachable?

The subject is not unknown: the transformation of philosophical thought which is called Existentialism has moved into the horizon of political theorists, if not of political scientists generally. What do political scientists know about it which causes it to impinge on their area of concern? Perhaps the dominant inclination has been to view the reputed doctrines of this transformation, and of Heidegger in particular, as sentiments of a form of apolitical romanticism spawned by social pessimism.[3] Certain individuals identified with the transformation are accorded significance if they deal directly with political themes. Camus is the best example. But it would be questionable to say that the transformation has consciously been espoused within either the theoretical horizon or the practical research of American political science. Why, indeed, should it be? The transformation does not occupy itself with questions of political theory in any traditional sense. This is particularly true of Heidegger's philosophy. He has not written works on political themes.

To the last statement there is at least one exception: Heidegger supported the "revolution," as it was called, in 1933. His address upon assuming the rectorate of Freiburg University is the most famous expression of that support.[4] Here, as in the case of the other "political" comments in Heidegger's works, we seem to be dealing with a question of political commitment. The "political," if not the philosophical, statements have excited curiosity. The nature of the political commitment which a representative of the transformation of philosophy is liable to make, or has made, causes the transformation to move within the horizon of political science.

Two problems are indicated: the relevance of Heidegger's philosophy to the scientific concerns of political science, and the nature of his political commitment. Needless to say, we cannot regard the latter problem as a matter for shocked and shocking gossip; to deal with it we would have to raise the question

of the philosopher's relation to society as well as the question of the relation of Heidegger's thought to his political stands.

We will have to make the effort to--using a Heideggerian expression--go along a part of the way leading towards the understanding of the dimensions of these problems. One way to do so is to use the limited perspective supplied by a confrontation of Heidegger's comments on the political situation of the age--not in order to present any kind of "ideology" of Existentialism, but in order to outline the areas of concern toward which these statements point. These "political" statements are, however, concerned with "nihilism": "No one with any insight will still today wish to deny that nihilism in the most diverse and hidden forms is the 'normal state' of mankind."[5] We will not meet much disagreement by saying that political science is concerned with what "is." The title 'Beyond Nihilism' in Recent German Thought is based upon two essays which we will shortly mention; one of the essays is by Heidegger. The theme "Beyond Nihilism" incorporates an analysis of what "is" as well as a "reflection on whether and in what way we may think" of overcoming nihilism.[6] The essays are a starting-point, but we will have to make a further limitation which is at the same time a further diffusion. The topic "Beyond Nihilism" is made accessible through the writings of Heidegger's friend, Ernst Juenger, and through Heidegger's estimate of those writings.

II.

The evident reference in the title of Heidegger's essay "Concerning 'The Line'" ("Ueber 'Die Linie'") is to Juenger's contribution to the Heidegger Festschrift several years earlier. Juenger's "Over the Line" (Ueber die Linie")[7] is, according to Heidegger's essay in the Juenger Festschrift, an "appraisal of the situation," which "attends to the signs which let one recognize whether and to what extent we cross over the line and thereby step out of the zone of completed nihilism." Juenger's "medical diagnosis" "looks across and crosses over"; Heidegger intends his essay to look "first only at the line," at "the zone of nihilism completing itself."

This might seem a boring topic to some; there are now so many "analyses" and "criticisms" of "the age" as to be boring. Heidegger's essay, however, is perhaps less concerned with Juenger's "signs" of a possible crossing of the line than with the latter's presentation of nihilism in his earlier book, Der Arbeiter (The Worker).[8] Heidegger alludes to a conversation with Juenger "towards the end of the last decade," or about the time when Juenger was presumably preparing his publication on the escape from nihilism. The two friends walked along a forest way (Waldweg), and halted where a wood road (Holzweg) branched off. At that point, Heidegger urged Juenger to have Der Arbeiter republished without alterations. It is not related that he asked Juenger to attempt a "crossing of the line." This would have been particularly unlikely, for Heidegger notes that "active nihilism...is already thought of in Der Arbeiter in Nietzsche's sense in the direction of an overcoming."[9] The two friends accompany each other to that point where one of the Holzwege branches off. Juenger does not accompany his friend "on his way on a Holzweg," but his true contribution is, in a sense, a prerequisite to the possibility of turning into a Holzweg.

In what does Juenger's contribution consist, according to Heidegger? "Your work," he writes, "achieved a description of European nihilism in its phase after World War I." The "action" of Der Arbeiter "consisted--and, in an altered function, still consists--in the fact that it makes the 'total work character' of all reality visible from the /standpoint of the/ Gestalt of the Worker. Thus nihilism, at first only European, appears in its planetary

tendency." During the winter of 1939-1940, Heidegger discussed Juenger's book in a small circle of university professors. Its "clearsightedness" taught them the need to let one's "glance move towards the present in the optics of Der Arbeiter, and to think in planetary terms." Nor has the work since become obsolete. Its accuracy remains, for "man as the animal rationale, i.e., now as the working living being, has to wander without rest through the desert of the devastation of the earth."[10]

The importance of Der Arbeiter is not, however, exhausted by its"descriptions." "In a way different than Spengler's, it achieves what hitherto all the Nietzsche literature was not able to achieve: the communication of an experience of being [Seienden] and of that, how it is, in the light of Nietzsche's projection of being as will to power." We should note that Juenger, in reflecting during the Second World War on his "old testament," maintained that Der Arbeiter presented an "analysis" rather than a "recommendation" or a political program. As Heidegger indicates, however, quoting the Foreword to the work, "you do not merely depict a reality that is already known, but make available a 'new reality,' in which it is 'less a question of new ideas or a new system...'" No description, Heidegger asserts, in itself would make it possible to show reality in itself; every description moves within a definite horizon determined by basic experiences of beings as a whole [Seienden im Ganzen] . These basic experiences are, however, preceded by an illumination of how a being "is." Juenger's basic experience arose in the battles of materiel during the First World War. But beings as a whole reveal themselves to him within the illuminating framework of the metaphysics of the will to power, expounded by Nietzsche as a value theory. Juenger followed the movement of nihilism in action; his description of this movement was particularly impressive because, as a description, it participated in the action. In Der Arbeiter, the reality of "total mobilization" was determined by, in Juenger's words, the "will to total mobilization." [11]

Juenger's "crossing of the line" indicates to Heidegger that the "optics" which guided the descriptions in Der Arbeiter have become blurred; the retreat from "taking part in the action of active nihilism" thwarts the possibility of discussing the essence of nihilism. The position developed in Der Arbeiter, not the position developed in "Ueber die Linie," makes it possible to "newly enkindle the clash [Auseinandersetzung] " with the essence of nihilism. This is so because the book "speaks the language of our century."

In what sense does Juenger's work "speak the language of our century"? According to Heidegger, the best witnesses to the pervasiveness of nihilism are "the exclusively re-active attempts against nihilism." "Instead of letting themselves into a confrontation with its essence, they strive for the restoration of what has been." Der Arbeiter makes it possible to approach a confrontation of the essence of nihilism: Juenger does not strive for the restoration of what has been. His work is itself part of the movement of nihilism. Heidegger elsewhere indicates that the danger into which Europe is ever more distinctly pressed consists in the fact that its thinking "is falling behind the essential course of the world fate [Weltgeschick] which is dawning."[12] To Juenger's work he might apply what he says about "the doctrines of Communism and their foundations"; that, regarded from the standpoint of the history of Being seinsgeschichtlich , there speaks out in Communism "in an elementary experience that which is world historical."[13] The thesis of Der Arbeiter represents "planetary

thinking"; the work thereby brings to light the challenge posed by the world fate which is dawning, but which is not generally seen as something that is. Juenger does not "denkerisch grasp" Nietzsche's metaphysics; that is, he does not grasp the connection between Nietzsche's outline of being as the will to power and things as they now are (depicted by Der Arbeiter) in a way which would enable him to confront the essence of nihilism in terms of the history of thought. But his work depicts the demand placed by our century; that demand has to be seen as a phase of the history of Being [Sein], which underlies the history of thought. In reflecting [Besinnung] on the essence of modernity in the midst of the essential powers of this age, it is not sufficient "to affirm technology or, on the basis of the incomparably more meaningful attitude, to set up 'total mobilization' as an absolute, when it is seen to be present. What has to be done before and always, is to grasp the essence of the age out of the truth of Being holding sway in it...." 14

III.

According to Heidegger, then, Juenger's work was a part of the "Nietzsche literature," and has achieved a description of European nihilism in its planetary tendency. We must, during the following brief characterization of Der Arbeiter, bear in mind Juenger's descent from Nietzsche, and at the same time recall Nietzsche's saying: "Erst von mir an gibt es auf Erden grosse Politik."[15] This panel is interested in irrationalism. Der Arbeiter clearly deals in irrationalism. At the same time, however, it deals in the "rationalism" of our world. Everyone knows the name for that rationalism in its most evident aspect: modern technology, applied Science. The claims of natural science are planetary; one of the dearest aspirations of much of contemporary political science is to achieve a like degree of universality in its propositions. Later on we will raise a question concerning the last-mentioned "planetary thinking": to what extent do its chances for success, which at first must appear disheartening, rest on, and improve with, the successes of the "rationalism" which surrounds us? In Juenger's case, the placing of the technological world in the service of irrationalism makes his book a political book--far removed from "romantic reverie."

Der Arbeiter may be said to proclaim the end of "politics." That is, it foresees a world in which all political conflicts and situations shall have been eliminated. Juenger's "planetary thinking" pointed to the end of politics as a concomitance of the establishment of a world imperium. The goal "in which all efforts of the present" come together consists "in planetary dominion as the highest symbol of the new form" [of the Worker]. Dominion is the creation of an "order" which brings "security." Juenger is guided by the conception that a "new reality" leaves open only one possibility.

The work proclaims the end of politics by proclaiming the coming of "final order." At the same time, Der Arbeiter is manifestly a "political" book: it tells the direction in which final order lies, and how to get there. Political events are treated from the standpoint of the military strategist. The scene around us is compared to a battleground in which a merely "tactical value" is assigned to the objects it contains. "This means that in the course of movement there are things of deadly seriousness which nevertheless become completely meaningless as soon as the movement has gone beyond them." These "tactical points" are "valued" only in terms of "the strategic will." The

strategic will aims at mastery of the globe, at "final order." Discernment of the course of political life leads, not to quiescence, but to fanatic partiality. "What is needed is to mount the force and velocity of the process in which we are caught." Put most simply, and therefore rather misleadingly: Juenger tells the Germans--or, rather, certain Germans--how to make "grosse Politik," how they can and must put what now is, in the service, not of the "comfort aspect of technology," but of its "power aspect."

The ground for the "planetary thinking" of Der Arbeiter is supplied by "life" and technology. Their relationship may be provisionally understood in the following manner. Juenger asks how the "will to power" can be "legitimized," i.e., how it can be made concrete. The answer lies in the fact that power is nothing other than representation of "the form of the Worker." The Worker is a product of technology. Nietzsche's "will to power," rooted in life,[16] is, according to Juenger, made an "historical power" through technology.

If one talks about irrationalism, one must talk about "life." The revolt in the name of "life" is comprehensible only against the background of modern rationalism in all its forms. The basis of the conflict is evident when we think of the dichotomy: reason "versus" life. The conciliation of the two terms is the unsolved problem whose existence constitutes the crisis in which we are all involved. The extraordinary popularity of the term "life," and the many varieties of emphasis upon "life"--from anthropology to pragmatism--indicate, not the solution of the crisis, butits very pervasiveness. It is the hopeless entanglement of life and reason within the same framework with which Heidegger is concerned, and which he seeks to overcome by a new position. Whether his philosophy may be said to spring beyond the confines of this framework, and of this crisis, is, of course, the key question.

Der Arbeiter exalts the "elemental forces" of life against the fictions of reason. It is not necessary here to reproduce Juenger's variations on this theme. The exaltation of life means, for Juenger, primarily the exaltation of danger and adventure. * That this revolt of life takes place, however, within the confines supplied by reflection, is indicated by Juenger's assertion that the "best answer to the treason of the spirit [Geist] against life is the treason of the spirit against spirit, and it

*His analysis of the world of the Worker--a world of the strictest"ordering"--necessarily involves a weakening off danger and adventure in favor of the requirements of technological rationalization, which determine the world of the Worker. This weakening of Juenger's sense of spontaneous "life" in Der Arbeiter has caused some commentators to argue that this work should be viewed as an erratic departure from Juenger's true, "individualistic," principles. This view is both irrelevant and inaccurate: it is analogous to the view which holds that "Existentialism"--in particular, Heidegger's thought--is simply a version of romanticism. It is irrelevant because Juenger was conscious of the problem of aestheticism, and believed that the only way for "life" to become politically meaningful was through adaptation to technology. It is inaccurate besides, for in Der Arbeiter, Juenger makes it clear that danger and adventure will still exist for those in command of "total mobilization" during the stages preparatory to the establishment of "final order."

is part of the high and terrible pleasures of our age to participate in this demolition work."

Juenger speaks of the "elemental powers" of life in terms "appropriate to this century"; thus, the "only apparent" congruity of the romantic and the elemental is to be torn asunder. We of this century "stand in the middle of experiment, we carry on things which are not founded in any experience." The consequence is that this century offers still unexplored possibilities for "an intensifying of the means and powers of life." The elemental is to be "translated into the language of the twentieth century."[17] Contrary to Nietzsche's saying in Zarathustra that "the last man lives the longest," Juenger states that the age of the last man "is already behind us."

Technology is the "new reality" which offers the "hope" Juenger seeks. In numerous penetrating analyses, he describes the pervasiveness of this reality. Its decisive characteristic lies in the objectification [Vergegenstaendlichung] of our life; this objectification carries within itself its own demands. While technology, during the transitional "stage of anarchy," is regarded as a "tool," its final and necessary outcome is "to realize at every desired place and at every desired time in every desired measure, dominion." Man becomes the object, the material of technology.

Juenger's solution is comprehensible as an answer to the oppressive question of modernity which Nietzsche exposed: How is a meaningful life possible? Juenger seeks "life" and finds it expressed in the man appropriate to that which seems to oppress spontaneity. Need we be remined of Marx's complaint, explicitly formulated in the following words?

> The result of all our inventions and progress seems to be that material powers become invested with spiritual life, while human life deteriorates into a material force....Some parties may wish to get rid of the modern capacities in order to get rid of the modern conflicts. Or they may fancy that such evident progress in the realm of production cannot be achieved but by a corresponding regress in the social political life. But we recognize in this antagonism the clever spirit which keenly proceeds in working out all these contradictions. We know that the new form of social production, to achieve the good life, needs only new men.[18]

Juenger's thesis is that the "new man" who does arise is a type appropriate to "the new way of living." The "mastering of the things* that have become overwhelming," the "controlling of the absolute movement," can only be accomplished by "a new humanity." One is, however, faced with the alternative of accepting the "peculiar means" of technology or "going under." If one accepts, one becomes object as well as subject: "The use of the means draws a very definite style of life after it." "The Worker" is, therefore, characterized by a "fusion of life with the means"; he uses the means like an animal uses its organs. Thus, the Worker overcomes the conflict between reason and nature, body and soul, the mechanical and the organic.

The "perfection" of this condition will only be arrived at, however, as a final stage. The final stage sees the end of "total mobilization"; the "dynamic and revolutionary" is succeeded by the "static and highly ordered," which coincides with the world empire, and signifies a "world of form." Juenger's "metaphysical" explanation of the Worker is based upon

*Emphasis supplied.

his conception of "Gestalt"; according to this "way of seeing," the final condition is not a "goal" towards which efforts are made, but the form which marks all efforts from the beginning. All the efforts and events of the present are, so to speak, stamped with the form of the Worker. Juenger calls this Gestalt "Sein." Technology must thus be understood as "the way in which the Gestalt of the Worker mobilizes the world."

We will have to return to Juenger's metaphysics after a consideration of his description of what is going on now, i.e., in the "absolute movement." Juenger discerns the first indication of the first stage on the way to final order in "total mobilization." The meaning of "total mobilization" should not be too difficult to fathom; while Juenger originated this term, one could hardly say that we have become familiar with what the term signifies through Juenger's writing. Events themselves have made clear, at least in some measure, the meaning which Juenger assigns the term. He understands it, to be sure, in the radical sense appropriate to the desperate will to the future which he learned from Nietzsche, and sought to make concrete. For Juenger, total mobilization signifies, not only what he discerned during the First World War, but also what must now be demanded in the way of political action. Consequently, the mobilization on the battlefield must be seen within the framework of the mobilization of society: "The face of the war flows into the greater picture of a gigantic Work-process. Alongside the hosts which meet on the battlefields, arise the novel armies of transportation, maintenance, and the armament industry--the army of Work altogether." What results is an "absolute utilization of potential energy," which indicates the dawning of the Age of Work. For the task of total mobilization is "the changing of life into energy"; "total exertion is work in the highest sense." This "mobilization of matter and of man" reaches its final stage, as has been seen, only when both technology and the new type of man have become "total," i.e., only when the distinction between the organic and the mechanical has been overcome. When that has happened, world rule and final order will arrive.

Juenger regards all phenomena of technology as contributing toward the achievement of total mobilization, and thus toward final order. He argues that technology cannot simply be used for the fulfillment of "purposes" not appropriate to its "language," without increasing the degree of anarchy. For the "victory of technology" creates anarchy by its impact on "the old ties." This anarchy hastens the coming of "quiet," of "final order."

This last conception appears familiar; however, the ground for a distinction from Marx must be sought in Juenger's teaching of "Gestalt" and in the relationship of this teaching to the will to power. The will to power may form a fundamental link to Marx.

Since technology creates anarchy its essence, according to Juenger, appears to be nihilistic. Consequently, Juenger is capable of speaking of the "gigantic decline" in which we are involved, and of the "horrible spirit" which has been forming "within our landscape." He calls "nihilistic," however, that spirit which seeks to retreat. Juenger is the author of the most famous oppositional work ever published in Nazi Germany: On the Marble Cliffs. In that work, the narrator speaks of those who sought "power and dominion" in order to stem an "epoch of decline": "The panic won its counterweight

in the daring insolence of the few...in the center of the cyclone."

Juenger's criticism of the spirit of "infinity" indicates the manner in which he seeks to reconcile the will to a future with a cosmic fate which forms an objective order.[19] We might say that the terms "progress," "growth," and "will to power" express this sense of infinity. "Growth," as the term is used in the American rhetoric, for instance, is a kind of will to power. According to Juenger, however, development reaches an end; the phase of anarchy is succeeded by "genuine and secure order." The development of technology is not boundless; it reaches its conclusion when it becomes an instrument of the new type of man, the Worker. Juenger conceives an end to development because of his "metaphysics" of the Gestalt as a "Sein." The form limits growth: "No development is capable of drawing more out of the Sein than is contained in it." But Juenger also says that this "Sein is power." Consequently, the bounds placed to growth are really only those placed by the will to power. The bounds placed on the will to power, however, are determined by "the things that have become overwhelming," i.e., by one's mastery of them. Technology promises final order. Juenger's Gestalt conception appears to posit an absolute form beyond history; but what this conception amounts to is the notion that the will to power is "legitimized" by technology. But modern technology has come into existence during the course of history. It is thus, for Juenger, a fate which man has to face up to; he does so by willing this fate.

This fate has resulted in an anarchy of "values." One must draw the consequences from this pervasive doubt: "One must here cross over a point from which nothingness appears more desirable than everything which manifests even the smallest shadow of doubt." From this point, "values are set in relation to the non-qualitative, but creative, Gestalt. They are therefore relative, but in the sense of a warlike partiality, on the basis of which every different protest is disputed." The Worker therefore uses the means at hand for the creation of planetary rule; in this way, he masters the things which history has brought about, but which the present world cannot master. Naturally, this activity means that there will be further destruction, and consequently war. Willingness to participate and initiate will demonstrate membership in the "active stratum" of the world of the Worker. The fact that the "objectification" of the world is a worldwide phenomenon, from which no part of the world is excluded, leads, not to understanding and cooperation, but to concurrent attempts to "master the means." Those who best master them will be the founders of a new security.

IV.

At the time that Juenger wrote Der Arbeiter, the German intellectual atmosphere was dominated by two terms: "decline of the West," and "conservative revolution." A "conservative revolution" shortly thereafter came to pass, but hardly in the form dreamed of by those who spoke of "tradition." The revolution against the "decline of the West" took place on the ground supplied by that decline; consequently, it took place in Juenger's sense. According to lectures delivered by Heidegger in 1935, that which is "being peddled around as the philosophy of National Socialism" has "nothing to do with the inner truth and greatness of this movement--namely, the meeting between planetary technology and modern man."[20] How can this remark be understood

unless in light of the problem with which Der Arbeiter was concerned--the reconciliation of Western man's objectification of all things presented "before" him with that man himself, standing amidst the collapse of "objective values?"

Heidegger concluded his address upon assuming the Freiburg rectorate in 1933 by offering the alternatives of a will to "the essence of the German university" or--in the absence of such a will--the expectation of the spiritual failure of the West and the crashing down of the West. The will to want the essence of the German university was equated, however, with the will to want what was happening in Germany then and there. According to this address, the problem of the sciences had to be seen in the light of Nietzsche's "God is dead," and thus in the light of "this abandonment of contemporary man in the midst of things /Seiende/." Thus, the essence of science would have to be understood in the sense of "fragenden, ungedeckten Standhaltens inmitten der Ungewissheit des Seienden im Ganzen." Both the sciences and the German "Volk" were "set out," or exposed, in the most extreme questionableness of their existence (Dasein), standing in the midst of the "Uebermacht des Seienden." But to be so set out meant to Heidegger to be open to the "Unumgaengliche," to the unavoidable, to fate. How did Heidegger understand this fate? He understood it in terms of a dispensation given to the individual as a member of the German folk to, by his own decision, accept and thus master what history had brought. According to Sein und Zeit, if one is not to live in senseless uncertainty, one must make an affirmation of some possibility. The hovering in indecision of those impressed by the number of possibilities, or variety of views, must be overcome. But decision and fate are intertwined. One decides for that which fate has brought. But what if that unavoidable was "planetary technology" and all that the term indicates to Heidegger? The German fate would be to master that fate. Heidegger is so thoroughly modern because he thinks in terms of what now is. "He has allied his thought, the thought of being, in which he takes part and to which he ascribes the power to make ready for the rise of the holy, to that hour which he has affirmed as history. He has bound his thought to this hour as no other philosopher has done."[21] The "rise of the holy" refers to expectations expressed in Heidegger's later writings. The orientation to the problem of securing for man a fast place within the changes of history antedates this redirection of Heidegger's thought,and remains after this redirection. In 1938, Heidegger wrote that when one undertook a "Besinnung" on the "Wesen" of modernity, thought and decision* were placed "in den Wirkungskreis der eigentlichen Wesenskraefte dieses Zeitalters." These powers worked without being touched by any alltaegkichen* valuation. "Ihnen gegenueber gibt es nur die Bereitschaft zum Auftrag oder aber das Ausweichen in das Geschichtslose."[22]

Heidegger was so oppressed by that "which is happening in this age," ("Nietzsches Wort..." p.245) that in 1933 the only way he could overcome that which was happening was to accept a phenomenon which promised to fulfill it. Obviously, we are not talking within Heidegger's philosophy here; we are talking around about its fringes. Heidegger's political decisions do not enable one to understand his philosophy, much less justify one in ignoring it. Nevertheless, this decision reflected Heidegger's concern with the present; and the present is taken up in Heidegger's philosophy. In Sein und Zeit, at least, man is defined as a Dasein,thrown into a given world. Heidegger's political decision is not necessarily to be explained

*Emphasis supplied.

as a consequence of his philosophy; but in his philosophy,Heidegger is concerned with time and history, and thus with the present.[23]

This concern with the present is apparent in Heidegger's reply to Juenger's "overcoming of nihilism." But all of Heidegger's philosophy since Sein und Zeit is explicitly concerned with the problem of nihilism. The few remarks which can be made here merely indicate the outline of his argument. They do not enter into his philosophy. It must be remembered too that Sein und Zeit is Heidegger's most important work and that an new direction became evident in the later writings--though it may be that the same issues are involved. Nevertheless, the remarks to be offered may be of some aid in clarifying the question of the relevance of Heidegger's thought to the theoretical bases and practical research of political science.

Juenger's theme of "crossing the line" of nihilism in some other way than through participation in nihilism began to make itself known in works written during the Nazi regime. While he wishes, as Heidegger remarks, to retain the perspective which Der Arbeiter opened up, he has not followed Heidegger's suggestion that the work be republished.In his later works--including "Ueber die Linie"--he characterizes the basic features of our world as "reduction" and "exploitation." Juenger's thesis is that,given this nihilistic world, "social" and "political" distinctions are of little real help in explaining what is taking place. "Political opponents" in this world are "so similar" as to be "representatives of the same power." Exploitation "is even more fearful" in nations in which the "machine and automaton world" operates to produce "comfort." Juenger engages, in effect, in a retreat to the "inner man." He reads the Bible,and begins to speak of the need for "teachers of Being."

Heidegger expresses more explicitly what Juenger,however, also sees: "But if man is once again to find his way into the neighborhood of Being, then he must first learn to exist in the nameless. He must recognize both the seduction through the public and the powerlessness of the private." ("Humanismus,"p.60). Heidegger accepts Juenger's descriptions of the present state of the world, but he asserts that this condition has to be explained philosophically and overcome philosophically--or, in Heidegger's terms, by Denken. A Zeitkritik is of little help. The fact that Heidegger is engaged in a philosophical endeavor means that what he says contains a reflection on the bases of all the sciences, including political science, and thus cannot be dismissed as simply an"ideology" or expression of a mood of "social pessimism."

Heidegger does, in fact, offer many "descriptions" of "the situation," of the evidences of nihilism. Since the description given by Juenger is fully accepted, Heidegger states that the self of man is "no longer anything more than the using of his Ek-sistenz into the domination of"what Juenger characterizes as "the total character of work." The "Untergang" of "beings" takes place "durch den Einsturz der von der Metaphysik gepraegten Welt und durch die aus der Metaphysik stammende Verwuestung der Erde." (VA,p.72). We might say: nihilism expresses itself,or is, in the fall of all other-worldly values and the fall of all this worldly values.

By means of an analysis which cannot be explored here Heidegger arrives at the conclusion,however, that what we call nihilism today is the

outcome of the history of Western thought since Plato, or, rather, that nihilism is an historical movement, "the basic movement of the West." ("Nietzsches Wort...") This movement culminates in the "total work character" of all reality. Since Plato, Western thought has cultivated beings rather than Being. A reorientation which inaugurated modernity began with Descarties, but the fateful movement began with Plato and ended in the thought of Nietzsche. This Western philosophy--metaphysics--has forgotten Being, or that by virtue of which all beings are. It has brought beings under the power of reason, placing them before the reason. The subject-object dichotomy issues in what we might term the inflated subject and the inflated object. Nietzsche's projection of the will to power is the final outcome of metaphysics, and Juenger applied this thought to the technological world. Nietzsche's view that ; the will must set values necessary for life is the final version of the effort to achieve certitude by control over beings. According to Heidegger, all valuation "laesst das Seiende nicht: sein, sondern das Werten laesst das Seiende lediglich als das Objekt seines Tuns--gelten."("Humanismus,p.99). That upon which a value is placed is made an object.

The analysis is directed against reason, "the most stubborn opponent of thinking," ile., of the thinking of Being. Metaphysics ist "der Geschichtsraum, worin zum Geschick wird" that "die uebersinnliche Welt,die Ideen,Gott, das Sittengesetz, die Vernunftautoritaet,der Fortschritt, das Glueck der Meisten,die Kultur, die Zivilisation,ihre bauende Kraft einbuessen und nichtig werden." (Nietzsches Wort...) Nietzsche drew the consequences from the forgetting of Being:

> Der Kampf um die Erdherrschaft ist in seinem geschichtlichen Wesen bereits die Folge dessen,dass das Seiende als solches in der Weise des Willens zur Macht erscheint, ohne doch schon als dieser Wille erkannt oder gar begriffen zu sein. Ohnehin sagen die mitlaufenden Doktrinen des Handelns und die Ideologieen des Vorstellens nie das, was ist und darum geschieht, Mit dem Beginn des Kampfes um die Erdherrschaft treibt das Zeitalter der Subjektitaet in seine Vollendung. Zu ihr gehoert,dass das Seiende, das im Sinne des Willens zur Macht ist, seiner eigenen Wahrheit ueber sich selbst nach seiner Weise in jeder Hinsicht gewiss und deshalb auch bewusst wird. Das Bewusstmachen ist ein notwendiges Instrument des Wollens, das aus dem Willen zur Macht will. Es geschieht hinsichtlich der Vergegenstaendlichung in der Gestalt der Planung." (Ibid.)

What is the significance of this critique? The critique is directed at all the sciences, which deal with beings, and against the objectification of beings which they undertake. The sciences are not able to understand their own ground of Being, or even to make the attempt; they manipulate beings with the aim of certitude. That, naturally, can best be achieved when beings are controlled. Heidegger calls attention to the problematical character of Western philosophy and science. He does so, however, in a manner which identifies modern philosophy and modern science with ancient philosophy and science; any distinctions are not crucial. The problematical character of the sciences is rooted in the fact that they pull themselves away from the original "givenness" of things. Neither metaphysics nor the sciences which flow from it understand truth as disclosedness.

The implications of this critique are, clearly, widespread,affecting the bases of philosophy and all the sciences. Here we can only refer to Heidegger's view of the situation which has resulted. The sciences,removed from "life," eventually create that technology which is planetary in its impact. In picturing the planetary claims of the sciences, Heidegger exposes problems which one may doubt that contemporary political science has taken into adequate account. The discipline's understanding of its task is at issue; particularly that understanding which sees it as the task of political science to arrive at universal propositions. According to Heidegger,"value free" science is not "value-free": "die moderne Wissenschaft ist als Theorie im Sinne des Be-trachtens eine unheimlich eingreifende Bearbeitung des Wirklichen."(V&A,p.56).

Moreover, in Heidegger's view, that "universal" which exists in the world is modern technology and its appurtenances. This means, among other things, that a universal tyranny as Juenger sketched it is possible. European nihilism "becomes planetary" because it projects itself over the whole globe. It projects itself in the form of scientific reason and the consequences of that reason. There are,however, no other universals. How,asks Heidegger, can we possibly speak with, for example, the Asian nations, except through the intrusions of technology. The West can only seek to transform the world in its own image.

The problem of cross-cultural research is the most crucial problem confronting the aspirations of contemporary political science to universal propositions.[24] But has political science thought of the dimensions of that problem? If the only universal is scientific reason and its works,the achieving of universal propositions will depend on the achieving of a uniform situation. The desire of political science for universal propositions may be fulfilled only because there will, in fact, be that "predictable" world sketched in Der Arbeiter.

In Heidegger's view, the philosophical task of bringing thinking back to its true element cannot be called "irrationalism." Irrationalism is a reaction against rationalism,and thus involved in the forgetting of Being as well. The "Weltfrage des Denkens" concerns the thinking of Being. Heidegger reckons with the fact that this thinking may be "sehr duerftig"; it must not be expected to bring salvation. In particular, in order to prepare the way for a return of Being,and thus an overcoming of nihilism, we must limit philosophy to reflection on "old venerable words";this emphasis is connected with the emphasis on language altogether,especially the language of poets. Heidegger broaches the fundamental problem of the relationship of philosophy and poetry.

It has been said that Heidegger thinks from the standpoint of the present, out of "the need of the present." He understands the forgetting of Being by man--Seinsvergessenheit--in terms of a "Geschick" of Being. Thus we may more properly speak of Seinsverlassenheit,or of a forgetting of and by Being. But he also indicates that metaphysics (and thus nihilism) is a Geschick of Being, part of the "truth of Being." Thus it is possible for him to say that "das Sein sich uns zuschickt, indem es sich entzieht." (SG, p.108). He speaks of overcoming nihilism by entering into the essence of nihilism. The concept of the Seins-Geschick leads to the whole problem of the "historicity" of Heidegger's thought. It also raises the question

of how Heidegger expects nihilism "to end," or how it may be checked. For if nihilism is a Geschick of Being, then we must, so to speak, let it fulfill itself. The many apocalyptic sayings of Heidegger on the present age culminate in the assertion that "where danger is, comes saving." Thus, for example, "Wenn wir uns dem Wesen der Technik eigens oeffnen, finden wir uns unversehrt in einen befreienden Anspruch genommen." (VA,p.23) But this Wesen leads us back to Sein. Heidegger says that the "Wesen des Nihilismus" is "nichts Nihilistisches." Not only that; he says that "das Wesen der Technik ist in einem hohen Sinne zweideutig. Solche Zweideutigkeit deutet in das Geheimnis aller Entbergung, d.h. der Wahrheit." (VA, 41) This leads back to the assertion in Sein und Zeit that the Being-in-the-World of Dasein is its unavoidable Unwahrheit. "Das Dasein ist, weil wesenhaft verfallend, seiner Seinsverfassung nach in der 'Unwahrheit.'" (p.222,italicized). In other words, that world into which man is thrown is untruth. But that is part of "Sein." In some manner, "Entbergung,d.h. der Wahrheit" is intimately tied to untruth. In connection with the "saving" which comes "where danger is," Heidegger states that "je mehr uns der Gefahr nahern, um so heller beginnen die Wege ins Rettende zu leuchten."(VA,44) Moreover, "ehe das Sein sich in seiner anfaenglichen Wahrheit ereignen kann, muss das Sein als der Wille gebrochen, muss die Welt zum Einsturz und die Erde in die Verwuestung und der Mensch zur blossen Arbeit gezwungen werden. Erst nach diesem Untergang ereignet sich in langer Zeit die janze Weite des Anfangs." (VA,p.73).

Heidegger's concept of the Seins-Geschick, and the assertion that nihilism is part of the "truth of Being" evidently point to a central problem in Heidegger's thought. It seems to me that certain questions cannot be avoided--though I cannot answer them, and am not even sure they are the correct questions. I can only base these questions on part of Heidegger's work. But if these questions, together with the earlier remarks, are sufficient to indicate the importance of Heidegger's thought and the extent to which it transcends the category of "apolitical romanticism," my presumption may be made slightly less outrageous. If we begin with very simple things, we will still be sure that we are not dealing with mere chance expressions. What, for example, is the significance of Heidegger's request that Der Ursprung be republished without change? What is the significance of the statement printed in 1950 that "Dort, wo die Vollendung der Neuzeit die Geschichtslosigkeit der ihr eigenen Ordnung erlangt, wird allein die zukuenftige Geschichte vorbereitet"? ("Zeit des Welt Bild...",20)(written in 1938). How are we to understand the warning that the thought of Europe falls behind the "Weltgeschick" which is dawning? Is Heidegger's insistence that we engage in "planetary thinking," and, in particular, understand the task of a world regime, to be interpreted merely as a defining of the existing problem, which Heidegger wishes to escape by bringing the individual to some kind of "mystic chasm" in which his internal self will not be destroyed? Is Heidegger's insistence on an entrance into the "Wesen" of technology and nihilism to be interpreted as a call to an inner realm, from which we can derive strength to bear this fallen condition, a ... through art? How are we to understand Heidegger's assertion that classical philosophy and Christian thought are, in the most important respect, of a piece with modern philosophy? How, above all, are we to interpret his insistence that we are now receiving completed nihilism and the end of metaphysics, and that the thought is the first thought that has been able to overcome the Geschicke of Being?

All these questions center around the problems of fate and decision; the fact that Heidegger asserts the historicity of Dasein within a world of the

planetary technology which has been described. In other words in the face of the problem of historical change, Heidegger asserts the "knowness" of man as the one fast point. But the thrown one must make his own decisions. He has to come to terms with the Geschicke of Sein. That this is so is a Geschick of Sein. For example, in speaking of the significance of Marx's understanding of history (an understanding which arose because Marx experienced alienation) and the "weltgeschichtlich" character of communism, Heidegger states: "Das Wesen des Materialismus verbirgt sich in seinem der Technik, wenn die zuvor viel gescholten, ihm Recht gerecht wird. Die Technik ist in ihrem Wesen ein entsprechendmächtiges Geschick der in der Vergessenheit ruhenden Wahrheit des Seins. ...Als eine Gestalt der Metaphysik gründet die Technik in der Geschichte der Metaphysik. Diese selbst ist eine ausgezeichnete und die bisher allein uns durchsichtige Form der Geschichte des Seins."(Hinweise, 80) If we can say that it is Heidegger's doctrine that the "truth" is given to man in epochs of Sein, and that man must live up to his [illegible], that "die Wesung der Wahrheit selber in die Wahrheit des Seins Gestalten," does or dergestalt ek-sistierend, die Wahrheit des Seins hasle"(Hinweise, 75)-- then the attitude of man to the present Geschick, the "technical world," becomes indeed a question of "Gleichtacht nun nötig oder ob der Mensch in das Geschichtslose." Heidegger remains by the claim of the power of history and the need for decision. But history has now devised a situation as a result of which the era of historical changes been possible--i.e., Jünger's world of "quiet, final order."

Heidegger's position is based on the denial of the existence of a natural order in which man has a permanent place. According to Sein und Zeit, the essence or nature of man consists simply in the fact that he is "thrown" into existence (Dasein) without knowing his origin and wherefore that content he has to give himself. The denial of the existence of natural permanencies was the condition which made possible Heidegger's 1933 decision. Concerning Jünger and Heidegger's description of the current state of the world, one would have to ask, in particular, whether certain natural permanencies do not continue to exist, despite the extreme power of history and the changes it has wrought even on the character of man's life.

NOTES

(1) "Die Zeit des Weltbildes," Holzwege (Frankfurt, 1950), p.103.

(2) "Was ist das--die Philosophie?" (Pfullingen, 1956), Tr. William Kluback and Jean T. Wilde (New York, 1958),p.66. The page citations to this work and to the work listed in Note 5,below, are given from the German text included in the Kluback-Wilde editions. The translations have been changed in some cases.

(3) Cf. Judith Shklar, After Utopia (Princeton, New Jersey, 1957).

(4) Die Selbstbehauptung der deutschen Universitaet (Breslau, 1933).

(5) "Ueber 'Die Linie,'" in Armin Mohler (ed.) Freundschaftliche Begegnungen (Frankfurt,1955),pp.9-45; published separately with a few changes as Zur Seinsfrage (Frankfurt,1956), Tr. Kluback and Wilde (New York,1958),p.46.

(6) Ibid.,p.50. All future quotations from Heidegger are from this work, unless otherwise noted.

(7) "Ueber die Linie," in Anteile. Festschrift fuer Martin Heidegger zum 60. Geburtstag (Frankfurt, 1950), pp.245-84; published separately with a few changes (Frankfurt, 1951).

(8) Der Arbeiter. Herrschaft und Gestalt (Hamburg, 1932).

(9) Cf. Holzwege, Preface.

(10) Heidegger, "Ueberwindung der Metaphysik," Vortraege und Aufsaetze (Pfullingen, 1954),p.72.

(11) Quotation from Der Arbeiter,p.148; emphasis supplied by Heidegger. "Total mobilization," a basic theme of Der Arbeiter, was first developed in Juenger's 1930 essay "Die Totale Mobilmachung," reprinted in Blaetter und Steine (Hamburg,1934),pp.125-56. "Ueber den Schmerz," another essay referred to by both Juenger and Heidegger in association with Der Arbeiter, was first printed in the same collection, pp.157-216.

(12) "Ueber den'Humanismus'," Platons Lehre von der Wahrheit; mit einem Brief ueber den "Humanismus" (Bern,1947),p.88.

(13) Ibid. (14) "Zeit des Weltbildes,"Holzwege,p.89.

(15) Ecce Homo, "Warum ich ein Schicksal bin," 1.

(16) Cf. Heidegger, "Nietzsches Wort 'Gott ist Tot,'" Holzwege,pp.193-247.

(17) Cf. "Die Geburt des Nationalismus aus dem Kriege," Deutsches Volkstum, XI (1929),581. Where not otherwise indicated, the presentation in the text is based upon the essays "Die totale Mobilmachung" and "Ueber den Schmerz" as well as upon Der Arbeiter.

(18) Die Revolution von 1848 und das Proletariat, in Karl Marx als Denker, Mensch und Revolutionaer (Berlin, 1928),p.41; cf. Karl Loewith,Meaning in History (Chicago,1949),pp.36ff.

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(19) On the relationship of the doctrine of "eternal recurrence" to the will to a future in Nietzsche's thought, cf. Loewith, pp.214-22, and Nietzsches Philosophie der ewigen Wiederkehr des Gleichen (Tuebingen, Stuttgart, 1956).

(20) Einfuehrung in die Metaphysik (Tuebingen, 1953), p.152.

(21) Martin Buber, Eclipse of God (Harper Torchbooks, 1957), p.77.

(22) "Zeit des Weltbildes," Holzwege, p.89. Other works by Heidegger henceforth cited in the text: Was Heisst Denken (Tuebingen, 1954); Vortraege und Aufsaetze (Pfullingen, 1954); Der Satz vom Grund (Pfullingen, 1957).

(23) I cannot see that it is very helpful to speak of "self-realization" as the "ultimate value" of Heidegger's philosophy, to say that Heidegger tried "to give his philosophy a Nazi slant" by "translating" this value into "the right of the German people 'to will itself,'" and to conclude that in viewing Heidegger's 1933 decision one must "simply separate the man from the philosophy," because "the entire romantic spirit of Heidegger's philosophy is apolitical, and especially remote from the life of a totalitarian state or party." (Shklar, p.148). If it is true that one must separate the man from the philosophy, it is not for the reason given here. It is rather offensive to speak about Heidegger's philosophy in terms of an "ultimate value" at which it presumably arrives. As a philosophy, it is an attempt to question and think through reality, not a programmatic declaration. The terms "self-realization" and "romantic spirit" are, moreover, very imprecise. Furthermore, Heidegger did not need to "translate" "self-realization" into "folkish" terms, for in Sein und Zeit, resolve (Entschlossenheit) is already thought of in terms of the "fate" of a particular community in a particular generation, which limits the content and aim of resolve: "Das schicksalhafte Geschick des Daseins in und mit seiner 'Generation' macht das volle, eigentliche Geschehen des Daseins aus." (pp.382ff.) If for no other reason, the fact that Heidegger cites Dilthey at this point indicates that Heidegger's philosophy is concerned with the problem of historicism, and thus the variety of views in time and space.

(24) Cf. David Easton, The Political System (New York, 1953), pp.31-35.

"The Warren Court and the Lower Federal Courts"

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Within recent days it has made news that the House of Delegates of the American Bar Association received a report of the Association's Committee on the Bill of Rights which indicated that the Supreme Court of the United States was acting courageously and in the best judicial tradition in the field of civil liberty. That the acceptance of such a report should have occurred only after considerable protest might seem rather odd if one looked merely at the wording of the Federal Bill of Rights and the first of the Canons of Professional Ethics of The American Bar Association. Canon One declares it to be the duty of the lawyer to maintain toward the courts (presumably all courts) a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. The Canon goes on to declare: "Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor."

This relatively minor movement in the opposite direction merely underlines the overwhelming criticism that has been heaped (frequently with the help of lawyers and judges) upon the Supreme Court of the United States, its Chief Justice, and many of the individual Justices in the last few years. This criticism, fomented and sustained by those protesting the School Segregation Decisions, has even proceeded in some degree from the ranks of the federal judiciary itself. A national news magazine saw fit to circularize judges of the United States Courts of Appeals and United States District Courts, asking whether they agreed or disagreed with certain critical comments approved by the conference of chief justices of the various state courts. Although many of the judges refused to reply, it is reported that of the 128 federal judges who did reply, 39% disagreed with the criticism of the state chief justices, while 15% preferred not to express any view, leaving 46% who expressed agreement with the adverse criticism. See Forrester, The Supreme Court and the Rule of Law, 4 South Texas Law Journal 107, 110 (Spring, 1959)). This percentage of disagreement, perhaps not too significant when the total number of federal judges is considered, brings us to the special topic of this discussion, which has reference to the interaction between the Supreme Court and the lower federal courts in the period since the beginning of Chief Justice Warren's term of service. The reported decisions of the Supreme Court reveal the deep divisions that at times exist within that body itself. It should occasion no particular surprise to find that presently there are varying viewpoints within the ranks of the total federal judiciary in their acceptance and implementatkon of Supreme Court pronouncements. We can safely assume that this situation has always existed to some

degree and will continue with varying degrees of intensity. It is more remarkable, perhaps, that there has not been more during this period of crisis.

Article III of the Constitution of the United States speaks of vesting the judicial power of the United States in the Supreme and "inferior" courts as if it were some unitary or indivisible substance, but the article specifies no method of achieving or maintaining any such unitary character in the exercise of the power. The Founding Fathers foresaw pressures operating upon the courts exercising this judicial power of the United States and sought to relieve against it, so far as it was possible to do so by giving the judges security of tenure and compensation. These constitutional provisions which make for independence in the federal judiciary as against pressures from other branches of government and the general public will, undoubtedly, also generate in a member of the lower federal judicieary a belief that he is something more than a mere reflection of the High Tribunal--a mere spokesman for applying its decisions. He will sense that his judicial independence includes to a degree, independence as against the higher courts in his own system.

The received tradition for a judge of the United States District Court is that he is obliged to follow, as binding precedent, the decisions of the Supreme Court of the United States and of the Court of Appeals of his own circuit. In turn, of course, the judges of the Federal Courts of Appeals are bound, under the accepted doctrine, by the decisions of the Supreme Court of the United States. This doctrine is not a matter of mere lip service. It is believed that, if one were to poll the individual district judges, almost unanimously the response would be that this obligation is controlling in the approach to a particular decision. If he discussed the matter further and candidly he would probably reveal his great distaste for being reversed by a higher court and perhaps some of the techniques he may utilize to minimize this hazard. It is a real deterrent in forces shaping his action.

In contrast to the point just made and speaking generally, without regard to relationships during the last five-year period, it is quite obvious that the general doctrine as to the binding character of Supreme Court decisions has never been fully adhered to nor could one reasonably expect that it would be followed with unvarying consistency. This is another way of stating the obvious fact that the application of federal judicial power is not unitary or indivisible on any particular legal topic--never has been, and never will be. The Supreme Court of the United States, the Courts of Appeals of the various circuits, the district courts, and indeed, each individual federal district judge, constitute separate centers of power. These centers of power exert forces in opposite directions at times, rather than in harmony, even after a presumably binding precedent has been established at the highest level. In serving as an attorney for a federal department, I found that I could become accustomed to speaking of "the law in the Fourth Circuit" as one distinct thing and "the law in the Sixth Circuit" as something entirely different, even under the same statute. It was a little more difficult to adjust to the idea that "the law" under a single federal statute, extensively interpreted by the Supreme Court of the United States and within a single circuit, could vary rather remarkably in its actual result from one federal district

court (or judge) in a state to another in the same state. Furthermore, it can be assumed that each of the judges being compared under the above circumstances would be seeking to do what he thought was "right" and would subscribe in full to the binding character of the decisions of the Supreme Court and of his own particular Court of Appeals.

Narrowing the matter to the relationships between the centers of power represented by the District Courts and the Courts of Appeals as opposed to the Supreme Court, several reasons will indicate why divergency and difference to some degree can be expected, even though full weight is given to intellectual honesty and good intention on the part of the lower court judge. First of all, divergency is furthered by the sheer number of cases that are being disposed of at the various judicial levels. During the fiscal year 1958, more than 95,000 civil and criminal cases were commenced in the United States District Courts. The figure has been in this vicinity at least since 1955. (Annual Report of the Director of the Administrative Office of the United States Courts, 1958, pp. 89, 98). During the fiscal years 1954 through 1958, the appeals and original proceedings commenced in the United States Courts of Appeals varied from approximately 3500 to 3700 per year. (Ibid., p. 152). The Supreme Court of the United States has received from the federal district courts and the Courts of Appeals the following number of cases between the 1954 and 1957 terms inclusive: 618 (1954); 811 (1955); 835 (1956); 930 (1957). Of these, in 1954, the decision below was left undisturbed (certiorari denied) in 491 cases out of 618. The corresponding figure left undisturbed for the other years was 655 (1955), 664 (1956), and 724 (1957). 72 Harvard Law Review 107 (1958). These figures suggest that the Supreme Court could not maintain any rigid uniformity of adherence to its announced principles in the federal judicial system. Chief Justice Vinson indicated in 1949 that the Court was not even particularly concerned to achieve this identity of result in the federal courts. He said:

> "The Supreme Court is not, and never has been, primarily concerned with the correction of errors in lower court decisions. . . . The function of the Supreme Court is, therefore, to resolve conflicts of opinion on federal questions that have arisen among lower courts, to pass upon questions of wide import under the Constitution, laws and treaties of the United States and to exercise supervisory power over lower federal courts. If we took every case in which an interesting legal question is raised, or our prima facie impression is that the decision below is erroneous, we could not fulfill the constitutional and statutory responsibilities placed upon the Court. To remain effective, the Supreme Court must continue to decide only those cases which present questions whose resolution will have an immediate importance far beyond the particular facts and parties involved. . . . Lawyers might be well advised, in preparing petitions for certiorari, to spend a little less time discussing the merits of their cases and a little more time demonstrating why it is important that the court should hear them." Quoted in Barrett, Bruton, Honnold, Constitutional Law, Cases and Materials, 1959, pp. 50-51.

The inevitability of variation within the federal system resulting from such an approach would seem to be obvious.

Variation in the administration of justice in the federal courts and a degree of freedom in the lower federal courts to act as independent centers of power is furthered by the extensive statutory arrangements provided by Congress for the exercise of federal judicial power. We do not have the Supreme Court of the United States acting in some generalized supervisory capacity over the lower federal courts, something in the manner of a schoolmaster and his pupils. Rather, the whole matter of what may be taken into each of the various courts and from one to another is to a high degree specified, regulated and controlled by the Judicial Code. (Title 28, United States Code). Federal judicial power is not unitary or indivisible because it has been in fact divided and allocated and limited at the various judicial levels by congressional enactment. Some bills introduced into Congress, you will recall, have sought to utilize this approach to curtail rather drastically the authority of the Supreme Court to exercise appellate jurisdiction in some of the areas covered by its more controversial decisions.

Divergency between the lower court and the Supreme Court is furthered also by the uncertainty or "fuzziness" of the high court precedent and, perhaps most of all, by doubts as to whether it will remain a precedent. If the edict itself is uncertain, or if there is a question as to whether the high court would itself now follow it, the possibility of variation and flexibility in lower court action is multiplied tremendously. Will the high court itself stand firm, or will it overrule or distinguish the precedent? As Charles P. Curtis has pithily remarked: "It is a little difficult for the lower court to have to follow the Supreme Court of the next succeeding year." Cahn, Supreme Court and Supreme Law, 1954, p. 85.

Leaving aside the specific pressures that may be generated by particular issues before the court, one can observe certain circumstances normally surrounding the appointment of a federal district judge, which to a varying and immeasurable degree cannot help but be reflected in the functioning of the several courts. A federal district judge is usually (but not always) a resident of the district where he is named to serve. He cannot fail to be aware of and to be responsive in some degree to the forces and the social, economic and political values which are dominant in that area. If he is named by the political party which is in the majority in that area, he will have been the recipient of what is normally regarded from the political point of view as the one bit of patronage that has no superior. Even when an individual is given full credit for a desire to be a "good judge" and to be unswayed by political pressures and to be "fair to friend and foe" alike, he remains the product of forces which it will be at times extremely difficult to ignore. These interests, to which would be added the social and economic interests of the individual judge, set up generalized tensions within which he carries out his basic accepted obligation to conform to the controlling precedent established by the Supreme Court and by the Court of Appeals of his circuit. These generalized pressures may or may not work against this basic obligation but it is obvious that the product of these pressures, plus much more specific pressure that may be generated in a case deeply involving the

emotions of the area, may strain to the uttermost the normal idea of conformity to Supreme Court edict and may in fact displace any such sense of obligation.

The foregoing divisive factors which can be regarded as more or less inherent in the federal system can obviously be greatly aggravated when other and larger forces move into the arena where a choice must be made by the court between implementing or refusing to implement a particular Supreme Court pronouncement. Perhaps a particular pronouncement will stir the dominant social, economic, or political structure to its depth and result in a marshaling of forces of resistance in an extraordinary manner. In other words, major fears are aroused, and major efforts at containing and combating the feared pronouncement will result. Furthermore, aggravated divisive factors are operative when Congress or influential members of Congress must be counted as a force against the implementation of a particular pronouncement and a force toward the minimizing, if not overriding, of the precedent. Further, it is obvious that the pressures on the lower court will be very great if some part of the Executive branch of the government (such as the FBI) or even the office of the President itself participates in the pressure to minimize or avoid implementation of the Supreme Court pronouncement. An example of these aggravated forms of pressure might be taken from another era. It will be recalled that Circuit Judge John J. Parker, in the case of UMWA v. Red Jacket Consolidated Coal & Coke Co., 18 F.2d 839 (1927), approved an injunction against union organizational activities directed against employees under a "yellow dog" contract. In so holding, he was following the pronouncement of the Supreme Court of the United States in Hitchman Coal Co. v. Mitchell, 245 U.S. 229 (1917), which had not been overruled. The United States Senate apparently took this as a sufficient basis for refusing to confirm him as a Justice of the Supreme Court of the United States.

If we turn from these general considerations and think specifically of the Supreme Court as we have known it in the last few years and its relationship with the lower federal courts, it is necessary to peg a point of beginning and that in itself would be most difficult if much precision is required. The Warren court succeeded the Vinson court, which in turn had succeeded the Stone court and the Hughes court which in 1937 began a constitutional revolution which is still in process. It is still in process because we have not yet reached that degree of equilibrium which gives at least a relative sense of stability in constitutional pronouncement. Law, it has been said, is always in the process of becoming, and presumably constitutional law is even more so. The lower federal court judge, attempting in good faith to carry out his basic obligation, has been faced with something of a frustrating process over much of this entire period. The unstable basis upon which the Warren court initiated its relationship in terms of lower court adherence to Supreme Court pronouncement is indicated by the following quotation from Professor Ralph E. Bischoff in 1953:

> "If laymen, and often the scholars, are confused by the revolutionary decade [i.e., 1937-1947] in which precedents fell to the left and to the right, they are hardly enlightened by the recent emphasis on prolixity, the frequent concurring opinions and the mass of dissents." Cahn, Supreme Court and Supreme Law, p. 79.

The interaction between the Supreme Court and the lower federal courts is set out statistically for the five years of the Warren Court in the November 1958 issue of the Harvard Law Review, at page 107. The statistics for the five preceding years (that is, 1948 through 1952) are set out in Volume 67 of the Harvard Law Review, at page 175 (November, 1953). These tables show the following number of reversals out of the total number of cases coming from the federal courts of appeals for the particular year:

1948: 58 reversals out of 607 cases; 1949: 42 reversals out of 645 cases; 1950: 40 out of 566; 1951: 19 out of 582; 1952: 40 out of 606; 1953: 23 out of 558; 1954: 57 out of 595; 1955: 54 out of 773; 1956: 60 out of 791; 1957: 69 out of 876.

While these figures indicate something of a sustained higher percentage of reversals in the last four years, there is no figure as high as the percentage of reversals for 1948 within the "Warren Court." On the whole, the percentage variation does not appear to be too significant and this generalization is not affected even if the figures relating to cases "vacated and remanded" and "dismissed" are added to the compilation.

In order to fully cover the topic of this discussion it would be necessary to take in each field of the law the decisions of the Supreme Court since the accession of Chief Justice Warren and see how those decisions have been received by the lower federal courts. Have they been accepted as binding and controlling? Have they been received hospitably and perhaps given even larger scope? Has there been an obvious refusal to follow them? Have they been distinguished, and has the distinguishing process been logically sound, or on a forced basis, eating into the vitality of the precedent? If this were done, it is believed that the picture would be far from uniform. In other words, the degree of acceptance and compliance would vary widely, depending upon the subject matter and the types of pressures operating in the local area and in the country when its application was called for in a particular case. There is no apparent revolt by the lower federal courts comparable to that engaged in by the Fifth Circuit in N.L.R.B. cases under the Wagner Act. There is nothing to indicate that the tensions between the Supreme Court and the lower federal judicieary is any more aggravated on the whole than has been true over the last quarter century.

While detail will deal with the interaction between the Supreme Court and the lower federal courts in the area of race relations, the foregoing generalities have been tested by checking lower court use of certain precedents developed during the Warren court term. One sensitive area in which there would be obvious local pressures upon a federal district judge and in turn, to some degree upon the judges of the courts of appeals, is in the matter of the administration of criminal law in the federal courts. There is always a conflict in this area between the matter of efficient and effective law enforcement and the protection accorded the accused or prospective accused under the Constitution or under the rules developed by the Supreme Court in its supervisory capacity.

In Mallory v. United States, 354 U.S. 449 (1957), the Supreme Court reversed and remanded in a case in which a person had been convicted of

rape at a trial where his signed confession was introduced in evidence. The confession was obtained during a period of interrogation by the police after arrest and before arraignment of approximately 10 hours duration. The court ruled that Rule 5A of the Federal Rules of Criminal Procedure had been violated in that the arrested person had not been taken "without unnecessary delay" before the nearest available Commissioner. The Court declared,

> "We cannot sanction this extended delay, resulting in confession without subordinating the general rule of prompt arraignment to the discretion of arresting officers finding exceptional circumstances for its disregard. In every case where the police resort to interrogation of an arrested person and secure a confession, they may well claim, and quite sincerely, that they were merely trying to check on the information given by him. Against such a claim and the evil potentialities of the practice for which it is urged stands Rule 5A as a barrier."

In the Shepherd Citator for the United States Reports (through August 1959) 58 citations have been found where a federal district court or a federal court of appeals discussed the above 1957 decision of the Court. Using the symbols in Shepherd's Citator, in 23 instances out of the 58 the lower federal court distinguished the Mallory case as being different in fact or law from the case before it. In three instances, the court followed the Mallory case and followed it as controlling authority. In eight instances, the Mallory case was cited in the dissenting opinion. In four instances out of the 58 the symbol indicates that the court explained the Mallory opinion and its importance in some detail. In one instance the court harmonized the decision in the Mallory case to show that its apparent inconsistency with other decisions did not exist. The other cases carry no special symbol and in no instance did the editor of the Citator say that the lower federal court had "limited" or "questioned" the Mallory decision of the Supreme Court. It must be judged that on the whole in this instance the lower federal courts have not received favorably the Mallory precedent.

Something of the negative tone in the lower court decisions is indicated by the following quotation from the majority opinion in Starr v. United States, 264 F.2d 377 (1958), cert. denied, 79 S.Ct. 652.

> "Thus the Mallory opinion excludes only 'incriminating statements elicited from the defendants.' It follows that none of the three Supreme Court opinions mentioned applies to the present situation where the statement givenby Starr was not incriminating but was clearly exculpatory.
>
> "But, if the Mallory opinion be construed to hold inadmissible an exculpatory statement taken during unnecessary delay in arraignment, the question arises whether that decision changes the law concerning non-prejudicial error in the reception or rejection of evidence.
>
> "Under the law as it existed before the Mallory case was decided, the harmless error rule required that if, upon an examination of the entire record, substantial prejudice does not

appear, any error must be disregarded as harmless. This is commanded by the salutary statute which Congress passed to correct the abuses that had grown up because, as one trial judge put it, courts of review had come to 'tower above the trials of criminal cases as impregnable citadels of technicality.' " 264 F.2d at 380.

Another decision in the field of criminal law administration is found in Rea v. United States, 350 U.S. 214 (1956). In this case, the Supreme Court held that it was error for the federal court not to enjoin the use of illegally obtained evidence by a federal official in a state criminal proceeding. The court said in this instance that the federal agent had violated the federal rules governing searches and seizures and that the power of the federal courts extends to policing those requirements and making certain that they are observed "to enjoin the federal agent from testifying is merely to enforce the federal rules against those owing obedience to them." The Shepherd Citator through August 1959 shows 16 citations for this precedent by federal courts of appeals and federal district courts. In no instance does the symbol indicate that the case was followed. In one case the importance of the decision was explained in some detail. In four instances the precedent was distinguished as different in law or in fact from the case before the court. There were no other symbols, but actually it appears that in other instances the case might very well be listed as among those distinguishing the Rea precedent. Again, in the era of administration of criminal law, the record indicates an unfavorable reaction by the lower federal courts to a recent Supreme Court precedent.

Two other cases might be similarly examined. In the case of Yates v. United States, 354 U.S. 298 (1957), an important part of the decision was a holding that the charge to the jury was in error in failing to indicate the proximity of the danger in the advocacy of violent overthrow of the government. The language of the Court in this respect is generally considered as an important modification of the doctrine of the Dennis case (decided during the term of Chief Justice Vinson) which had seemed to establish what is sometimes called the "clear and probable" danger test in free speech cases. The action of the Supreme Court in the Yates case in turn was considered by many to have re-established the "clear and present" danger test in this regard. The Shepherd Citator shows ten references in lower federal courts to the Yates decision. The result seems on the whole favorable to the vitality of the precedent. Two instances are listed as following the precedent; two are listed as accepting it as controlling and explaining it in some detail. There are no instances listed of the precedent being distinguished nor of it being relied upon by a dissenting judge.

In the case of Watkins v. United States, 354 U.S. 178 (1957), a check of the citations in the lower federal courts reveals no particular pattern of response to this somewhat controversial decision. The portion of the decision which denied a power in Congress to engage in exposure of individuals for the sake of exposure, as opposed to some legislative purpose, and the portion which required that the legislative purpose be shown with some particularity in respect to a question before the refusal

to answer the question could be deemed the basis of contempt--these portions together have three references in lower federal courts; once by a dissenting judge, once the precedent is distinguished, and in one instance it is shown to have been followed. The result is therefore inconclusive.

The race relations area is the one which of course is primarily responsible for our even being interested in this topic at this time. The School Segregation Decision in 1954 is perhaps unprecedented in the extent to which it has shaken the social values of an entire region of the country. The writer believes, however, that the overall judgment as to the functioning of the lower federal courts in relationship to the Supreme Court has been favorable in terms of the implementation of the Supreme Court's pronouncement. It is decidedly more favorable, it would appear, than the response to a precedent such as that involved in the Mallory case. The fact of normal acceptance of the principle and the normal absence of a grudging approach to its implementation brings into even greater prominence the two or three instances in which federal district courts have seemed to engage in undue delaying tactics in the implementation of the Supreme Court pronouncement.

The rather generous acceptance of the principle of the School Segregation Cases by the lower federal courts, at least in the period prior to 1958, is best evidenced perhaps by the applications made of the principle in areas other than education. The Court of Appeals for the Fourth Circuit, in Dawson v. Mayor and City Council of Baltimore, 220 F.2d 386, held that the principle announced by the United States Supreme Court applied also to state and local activity in recreational facilities. The Supreme Court affirmed without opinion. 76 S.Ct. 133 (1955). Again, in Fleming v. South Carolina Electric & Gas Co., 224 F.2d 752 (1955), the United States Court of Appeals for the Fourth Circuit applied the principle of the School Segregation Cases to transportation on a local bus and held that the federal district court had jurisdiction of a damage suit against a bus driver who was enforcing segregation under the Federal Civil Rights Act. A premature appeal to the Supreme Court of the United States prevented this decision from becoming the basis of acceptance of the doctrine by the Supreme Court itself. Instead, the first authoritative decision was made by a three-judge district court, sitting in the Middle District of Alabama (Browder v. Gayle, 142 F.Supp. 707 (1956)). In this case too, the lower federal court held that segregation on local buses in Montgomery, Alabama violated the equal protection and due process clauses of the Fourteenth Amendment because the separate-but-equal rule of Plessy v. Ferguson had been impliedly overruled in the School Segregation Cases. The Supreme Court of the United States affirmed, again without opinion, on November 13, 1956. 77 S.Ct. 145. The Court of Appeals for the Fifth Circuit, in Derrington v. Plummer, 240 F.2d 922 (1956), held that the action of a lessee in operating a restaurant on a segregated basis in a county courthouse was unconstitutional state action. This result was clearly not absolutely established in all of its detail in the state of Supreme Court precedent existing at the time of its announcement. The same general pattern can be observed in the action of the Court of Appeals for the Sixth Circuit in Detroit Housing Commission v. Lewis, 226 F.2d 180 (1955). In this

instance, the United States District Court had issued a permanent injunction at the request of Negro plaintiffs who sought to enjoin segregation practices in the allocation of public housing units. The Sixth Circuit Court of Appeals affirmed the District Court's decision and remanded the case for further proceedings if necessary, in conformity with the decision of the United States Supreme Court in the School Segregation Cases.

The two outstanding examples of the apparent efforts of federal district judges to delay the implementation of the Supreme Court pronouncement with respect to schools are observable in the various opinions of Judge Hutcheson with respect to the Prince Edward County case and the decisions of one or more federal district judges at Dallas, Texas, with regard to the desegregation suit against school officials in that city.

The course of events in Prince Edward County is set out in this latest summary in 4 Race Relations Law Reporter at page 297:

> "One of the original School Segregation Cases (1 Race Rel. L. Rep. 5, 11) was returned with the mandate of the United States Supreme Court to the federal district court in Virginia. On the remand, the three-judge district court entered a decree requiring the admission of Negro children to schools in Prince Edward County, Virginia, without discrimination on the basis of race, and with all deliberate speed. Davis v. School Board of Prince Edward County, 1 Race Rel. L. Rep. 82 (E.D. Va. 1955). The plaintiffs then moved for the fixing of a definite time for desegregation of the county schools. Prior to action on these motions, the original three-judge court dissolved itself and turned over the supervision of the case to a single judge. 142 F.Supp. 616, 1 Race Rel. L. Rep. 1055 (1956). The defendants then filed a motion for dismissal of the case on the ground that recently enacted Virginia legislation had provided an adequate state remedy for the plaintiffs. After hearings, the district court held that the plaintiffs would not be required to exhaust the state remedies but that present conditions in the county, including public opinion unfavorable to desegregation, required that it defer an order requiring desegregation. 149 F. Supp. 431, 2 Race Rel. L. Rep. 341 (1957). The Court of Appeals for the Fourth Circuit reversed and remanded the case with directions to the district court to enter a decree requiring the abolition of racial discrimination in school admission policies "without further delay." After a hearing at which evidence of the deterioration of race relations in the county was submitted, and plans to conduct a survey of the county's school problems were disclosed, the district court fixed ten years following the 1955 decision in the Brown case as the time for compliance. The court ordered preliminary steps toward the formulation of a plan of compliance, meanwhile; directed defendants to report their progress on or before January 1, 1959, and reserved the power to accelerate or extend the date of compliance should the interest of the parties or the public call for it. 164 F.Supp. 786, 3 Race Rel. L. Rep. 964 (E.D. Va. 1958). On appeal, the Fourth Circuit again reversed and remanded on the ground that

plaintiffs' constitutional rights were not to be yielded because of race relations deterioration nor the probability of violence if precipitate action were taken. It was observed that recognition of the particular problems of a rural county where the races are practically equal in number had already been given effect in this case, but that defendants had taken no action during the four years since the School Segregation Cases were decided and were contemplating none. In order to give effect to the Supreme Court's mandate, the district judge was directed to issue an order enjoining defendants from any action regulating on the basis of color the admission, enrollment, or education of Negro children in county high schools; requiring them to consider applications of Negro children for admission to the "white" high school on a non-racial basis so as to permit entrance therein in September, 1959; and requiring them to make plans for admitting pupils to elementary schools on a non-racial basis and to receive and consider applications to that end "at the earliest practical day." The order also directed that state pupil assignment laws are to be observed so long as they do not cause racial discrimination, that administrative remedies therein specified must be exhausted by plaintiffs before applying for judicial relief on the ground of an alleged injunction violation, and that jurisdiction be retained for such further action as may be necessary."

The latest Dallas summary reads:

"In a class action, Negro school children in Dallas County, Texas, sought a declaration of rights and injunctive relief in a federal district court with respect to their admission to public schools in that county on a nonsegregated basis. The district court refused a motion to convene a three-judge district court, found that the public school facilities furnished for white children and Negroes were substantially equal, and held that the United States Supreme Court's implementation decision in the School Segregation Cases required that integration be accomplished on the basis of planning to be done by the school officials and the lower courts. The district court further found that no such plan then existed and dismissed the suit without prejudice. Bell v. Rippy, 133 F. Supp. 811, 1 Race Rel. L. Rep. 318 (N.D. Tex. 1955). On appeal, the Court of Appeals, Fifth Circuit, one judge dissenting, held that there was no basis in the evidence nor in law for the action taken by the district court and vacated, reversed and remanded the case. Brown v. Rippy, 233 F.2d 796, 1 Race Rel. L. Rep. 649 (1956). On the remand the district court, indicating that it would be a "civil wrong" to white pupils to admit Negroes to already crowded white schools, declined to issue an injunction and dismissed the case 'in order that the school board may have ample time . . . to work out this problem." Bell v. Rippy, 146 F.Supp. 485, 2 Race Rel. L. Rep. 32 (N.D. Tex. 1956). The plaintiffs again appealed to the Court of Appeals for the Fifth Circuit from this dismissal.

The Court of Appeals reversed the dismissal and remanded the case to the district court with directions to enter a decree requiring the school officials to desegregate the schools "with all deliberate speed." The court stated that administrative remedies available to the plaintiffs had, in effect, been exhausted by the refusal of the school officials to admit them to the requested schools and they were not required to pursue further a futile remedy. 247 F,2d 268, 2 Race Rel. L. Rep. 805 (1957). On petition to the Court of Appeals for rehearing it was contended that recent Texas legislation (2 Race Rel. L. Rep. 695), which would debar a school district from receiving state funds if it was integrated without first obtaining an affirmative vote in an election held for that purpose, would result in large losses to the district if it complied with the court order. The Court of Appeals denied the petition for rehearing, stating that the legislation could not operate to relieve either federal or state officials of their duty to uphold the United States Constitution. 2 Race Rel. L. Rep. 984 (1957). On the remand order of the Court of Appeals, the district court issued an order requiring the integration of the Dallas schools to be commenced at the mid-winter term (January, 1958). 2 Race Rel. L. Rep. 985 (1957). The defendants then appealed this order to the Court of Appeals for the Fifth Circuit. The Court of Appeals reversed the judgment and remanded the case with directions to the district court to enter an order in compliance with its prior opinion and to retain jurisdiction of the case to supervise the carrying out of the order. The court observed that, under the prior mandate, "school authorities should be accorded a reasonable further opportunity promptly to meet their primary responsibility.' "

In the latest development in Dallas, United States District Judge T. Whitfield Davidson declined on July 30 to order immediate desegregation. He said at that time that further hearings would be granted in the spring of 1960 if either side requested it, and indicated that September 1960 might be time enough for the district to complete its preparations. He declared, "I will postpone a final ruling on this hearing until a future date to be set by the court closer to the fall of 1960." (Southern School News, August, 1959, p. 12). Judge Davidson is quoted further as having said that the school board "should perhaps take some definite action maybe toward holding an election next spring."

These last two instances have been set out to demonstrate the possibilities of delay. If we can imagine the action of a United States District Court judge in a state where the pressures would be even greater to delay, we can begin to visualize some of the problems ahead in the matter of implementation of the Supreme Court's desegregation pronouncement.

Each of the other affected federal Courts of Appeals has taken action similar to that of the Fourth and Fifth Circuits to bring into line a district court which is deemed to have accorded too much value to the "good reasons" for delay in the particular locality. The Sixth

Circuit early overruled the federal district judge in the Hillsboro, Ohio case. (Clemons v. Board of Education of Hillsboro, 228 F.2d 853 (1956). More importantly, the Court of Appeals for the Eighth Circuit set aside Judge Lemley's 1958 decision permitting postponement in carrying out the previously approved Little Rock plan. (3 Race Rel. L. Rep. 643 (1958)). You will note that the several Courts of Appeals have not yet sustained a district court action with respect to school desegregation which patently gives aid and comfort to those denying the basic validity of the principles announced by the Supreme Court. In the action of the Fourth Circuit in establishing the requirement of exhausting administrative remedies (Carson v. Warlick, 238 F.2d 724 (1956); cert. denied, 353 U.S. 910), and that of the three-judge district court which found no invalidity on the face of the Alabama Pupil Placement Law (Shuttlesworth v. Birmingham Board of Education, 162 F.Supp. 372 (1958), affirmed on appeal, ____S.Ct.____), both were careful to uphold the principle of the School Segregation Cases even while giving approval to doctrines that can be utilized for delay purposes. But the doctrines so announced were already well established. The Supreme Court itself has indicated its approval of these two lower federal court decisions, thus signifying in some degree a relaxation of any idea of rigid and hurried implementation. The most important indication of the working of the federal judiciary may be found in the fact that the Supreme Court has not yet overturned a single Court of Appeals decision in this area of law. It seems to me that the functioning of the federal judiciary in this emotional area has evidenced on the whole a high degree of cooperation and sense of institutional protection. Obvious disaffection is a luxury that most of the lower court judges may feel they cannot afford. Of course we have not yet reached the cases in the "hard core" areas of the deep South which will generate the greatest pressures to avoid the Supreme Court pronouncement.

THE UNITED STATES FOREIGN POLICY PROCESS: SOME MAJOR PROBLEMS AND SUGGESTED RESEARCH FOCI[1]

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There are a number of points of view and perspectives from which one can approach the study of contemporary foreign policy-making in the United States. In this discussion, the focus is on the organizational structure and processes of the executive branch. In addition to making some tentative characterizations of the present executive organization for foreign policy-making, attention will be given to problems of research method involved in doing "field" studies in this area and, also, to a number of seemingly significant problems which have received relatively little scholarly attention.

I. Problems of Research Method

If one is interested in studying present-day United States foreign policy-making, there are a number of fairly substantial handicaps to be faced. For one thing, the system has been characterized by continuing and at times seemingly constant change, which makes it difficult to keep up-to-date on important details of structure and operation. Furthermore, there is often very little published material available on these matters, in the form either of reliable, well-informed description by outside observers or un-

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[1] The author has been associated since March 1959 with the Brookings Institution study of "The Formulation and Administration of United States Foreign Policy," currently being carried out on behalf of the Senate Foreign Relations Committee. Much useful knowledge and insight has been gained from the other staff members connected with this study, but particular thanks are owed to its director, H. Field Haviland, Jr. An earlier six-month period of research was made possible by a grant from the Social Science Research Council.

classified official documents. These factors merely reinforce what is really the crucial limitation, the fact that the intellectual materials of the organization, the papers and documents that are the grist of the policy-making machinery, are for the most part classified and thus normally not available to the outside scholar. (When under certain special conditions they are made available, significant limitations are imposed in terms of security clearance requirements for any manuscript that may be produced on the basis of access to these documents.)

In other words, to move beyond the formal organizational description that is available in unclassified materials involves the fundamental difficulty of trying to describe and analyze a structure whose primary activity and product is mental or intellectual without being able to look at any of the written results of this activity. Under almost any circumstances, interviewing would be a useful and, for certain kinds of questions, probably a necessary research technique in this area. However, given this limitation, it is absolutely necessary and, in addition, particularly difficult. Putting the difficulty in its crudest terms: what reliability can be attached to the data provided by the interview if it cannot either be supplemented or cross-checked by reference to relevant documentation?

I have no doubt that many historians would shudder at the thought and be quite skeptical about the scholarly soundness of the products that could emerge from such research procedures. This skepticism is not to be dismissed lightly, but, on the other hand, if the problems are viewed as significant and worth researching somewhat crudely rather than not at all, then the only answer that can be given is to do the research as carefully and systematically as possible with the tools at hand.

How then can the researcher relying rather heavily on interviews maximize their reliability and usefulness? By way of preliminary comment, it should be noted first, that the problems of interviewing are by no means confronted solely by students of foreign policy-making. Many scholars in other fields share the agonies and dilemmas. Furthermore, it is clear that some research problems raise more difficulties than others in this regard. For example, if one is trying to determine organizational relationships and communications flows among individuals and organizational units, it should be possible to crosscheck the information given by one interviewee as against that provided by others. Furthermore, there is likely to be more unclassified official materials available on that kind of question than some others. For example, the study of reciprocal attitudes as between military officers in the Pentagon and Foreign Service Officers in the State Department, is likely to pose roughly the same sorts of problems within this organizational setting as within others. At the extreme of difficulty, perhaps, would be efforts to analyze and characterize the structure's intellectual activities per se. Here, reliance on the testimony of those interviewed without the opportunity for independent examination of the relevant documents is an important handicap. This would seem to be at least part of the explanation for the wide variation in views on the nature and quality of the policy papers produced by the National Security Council structure. Certainly there are a number of other significant factors involved, but the outside scholar, at least, is substantially limited in his efforts to appraise this problem by his inability to look at the papers.

Returning to the original question, there are a number of ways, some of them fairly obvious, by which the researcher can strengthen the reliability of his work. First of all, it is obviously helpful to be as well-in-

formed as possible about the structure and processes of the organization in advance of the interviews. [2] This is among other things useful in locating

[2] Unfortunately, most academic researchers probably do not have the advantage of having at some point "lived" (i.e., worked) in the system. This is no doubt one reason for the usefulness of the book by Colonel William R. Kintner and his associates on military establishment organization, Forging A New Sword (New York, 1958). The three authors together have had considerable experience in various parts of the United States national security policy-making organization.

organizational relationships mentioned by the interviewee. It also saves precious interview time which does not then have to be spent in getting basic descriptive data about the system. [3] Second, and this is both obvious and

[3] In my experience, a one-hour interview with a cooperative and interested respondent goes very quickly, and an hour is about all that one can hope to get.

crucial, the researcher must be quite clear about "what he is looking for." Ideally, this would mean that he has a well-defined research problem, a set of organizing concepts and, hopefully, some hypotheses that he is trying to test. This does not necessarily mean arriving at the interview with formal interview schedule in hand (or perhaps mailing it to the prospective interviewee a few days in advance of the interview). There are differences of opinion here. Some feel that presenting an interviewee with a formal schedule may make him self-conscious, tense, feeling "on the spot," that more can be gotten from him by a relaxed, informal approach. Results will obviously vary from one respondent to another and, no doubt, from one researcher to another. However, whatever the approach used, the interviewer must be quite clear and self-conscious about what kinds of information he is looking for and, hopefully, why. These comments may perhaps be dismissed as the usual

plea for a more self-conscious, systematic, conceptual-theoretical political science, but leaving aside choice of terminology, it is difficult to see how the kind of interviewing problem posed can be answered in any other way than by a scholar operating in terms of concepts, hypotheses, and explicit criteria of judgment, to help orient and focus him, help him select the questions he is going to ask and the comments and clues he will want to pursue.

Where possible, it may be helpful if quantitative indicators or formal mapping or charting devices are used as a way of providing a check against more impressionistic or qualitative statements. For example, one research group has experimented with the device of sending the respondent an interview schedule in advance and asking him to list the people with whom he has both direct and indirect contacts, the nature of his business with them and frequency of the contacts; also, flow of incoming and outgoing messages, and a charting of the interrelations among the persons with whom he has contact. It would also be possible to ask an interviewee how he typically spent the hours of each week. More specifically, it might be useful to discover how many hours per week were committed to formal meetings of one kind or another. These particular possibilities may not seem too exciting. (Of course, their "excitment" would have to depend on why they were being asked, and the nature of the answers received.) However, the essential point is clear. Under certain circumstances, it may be possible to ask questions that will provide some more specific or quantitative crosscheck on statements tending to be impressionistic and qualitative.

The dependence upon interviewing participants in the process as a major research device in the study of contemporary foreign policy-making suggests a second and very practical, problem: how to use the privilege of

access to busy officials, both executive and legislative, to maximum advantage, both for the individual scholar and the profession as a whole. It may be worth reminding ourselves that American officials, both political appointees and career servants are, on the whole, quite generous in giving time to the scholar and student for interviews and in speaking as frankly as they can about the system in which they work. It would be quite surprising if such generosity were duplicated in any other country in the world. However, privilege has its responsibilities, and it is the view of a number of scholars working in this particular research area[4] that this interviewing

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[4] The idea mentioned here has no particular originality. It has been discussed with a number of people working in this field, and there is general agreement that something should be done to meet the problem before it becomes serious.

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of public officials by various individual scholars and research groups is being done so haphazardly and with so little cross-communication that in the end a substantial proportion of the respondents are going to lose patience with these uneconomic demands on their time and simply close the door to the research scholar. Apparently some Senators and Congressmen have already reacted in this fashion. This is not the place to suggest a plan for dealing with this matter. What is being emphasized here is that if contemporary national security and foreign policy-making processes are going to continue to interest the political scientist, it will be highly important if not absolutely necessary to have the cooperation of very busy public officials. How long these officials will continue to extend this cooperation and give generously of their time if they continue to be treated as a cheap commodity and not somehow systematically exploited and maximized by the profession is the question.

II. Some Guiding and Limiting Assumptions about the System

Before proceeding to a discussion of suggested research questions, it may be useful to set forth some basic assumptions about the foreign policy-making system and how it operates. Some of these may have the quality of clichés, but it may still prove useful to make them explicit and explore some of their implications. Hopefully, they may provide a basic framework of understanding and at the same time suggest possible limits on the effectiveness and usefulness of various modifications and reforms of the system proposed from time to time. To some extent they are viewed quite frankly as caveats to the eager reorganizer. [5]

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[5] Needless to say, these caveats are not directed at my colleagues on the Brookings study, who are keenly aware of them and have in fact helped alert me to some.

First of all, it has already been emphasized that the foreign policy-making system within the executive branch is in process of continuing change and development. It may be protested that this is true of all things, that change is the law of life. However, it seems fair to say that the pace of organizational change, the setting up of new agencies, and new policy-making and coordinating machinery, and the almost daily modification and reorganization of ongoing organizations, all of these confronted by quite novel problems of great enormity and complexity, has been strikingly rapid. Not only is the National Security Council only twelve years old, but its organization and mode of operation have undergone considerable adjustment and accretion during this period. The student taking a fresh look at the system after a few years' absence finds that the Operations Coordinating Board is

not only not the "dead letter" that some well-informed Washington correspondents would have you believe, but is an active operation with its own Presidential Special Assistant, its own well-staffed secretariat and approximately fifty interdepartmental working groups attempting to coordinate policy implementation in an equivalent number of major policy areas. This is not meant to imply that the OCB is a bureaucratic growth welcomed with open arms by the participating departments. However, it is another outgrowth of the logic of the National Security Council idea and has become in the five years since its inception a rather substantial operation. Again, its procedures still continue to undergo modification, most recently in the direction of simplification.

It hardly seems necessary to add to this picture the periodic reappraisals and reorganizations of both the military establishment and the Department of State. When it is further remembered that some of the problems faced by the system have probably not been faced by any other governmental system, including even the British, this seems all the more reason to approach it with appropriate modesty and tentativeness and certainly with a realization that experimentation and modification are inevitable and necessary and that probably the worst thing that could be done to the structure would be to attempt to fix it prematurely into some rigid and overelaborate mold.

The other point to be emphasized in this regard is that there have in fact been some impressive achievements since 1947 in the development of machinery for the formulation and implementation of national security policy. In spite of its difficulties and some of the criticisms currently being levelled at it, the National Security Council and the subordinate units and secretariats attached to it represent important achievements and move in a general direction that most observers regard as desirable. The gathering and

interpretation of intelligence have certainly advanced a considerable distance from the crudities and confusions of the immediate post-war period. In spite of shortcomings and handicaps of one kind and another, professionally competent agencies have been developed in the overseas information and economic-aid fields. Certainly both the State and Defense Departments are better equipped to cope with their mid-twentieth century responsibilities than they were ten years ago. All of this is not to be interpreted as the counsel of smugness and self-satisfaction. However in a society where the emphasis seems to be on loud and strident criticism and self-criticism, it seems apropos to remind ourselves of how far we have come as well as how much travelling still lies ahead.

Obviously, organizational structure, processes and procedures can have only limited significance in determining the quality of intellectual performance and decision-making skill and resolve, and the character of policy decisions themselves. This point is again at the level of a truism, but some of its implications seem worth underscoring. First of all, in a structure like the executive branch of the federal government, there can be no substitute for vigorous and thoughtful leadership at the top. To some extent irrespective of the qualities of the organizational machinery beneath, if there is not a top leadership--and this means first of all the President--with a sense of purpose and direction, with the energy and willingness to pursue agreed-upon objectives, with some sense of the organizational and other resources available to their command, there are important limitations on how well the organization can and will perform. This is a judgment difficult to document persuasively while at the same time briefly, but if it is thought of without regard to specific personalities and office-holders, it is so obvious as to need no further buttressing.

Just as there is no substitute for able and vigorous leadership at the top, there is no substitute for a corps of well-trained, experienced and devoted career civil and military servants within the government. The choice between a "good" organizational structure with rather mediocre and unimaginative personnel as against a somewhat chaotic and rather untidy organizational set-up with brilliant, first-rate people who have, in addition, the capacity and predisposition to work together effectively is an easy one.

In sum, the most carefully thought out organizational structure, with clear allocation of functions and specification of appropriate procedures under varying conditions--in other words, the best possible organizational arrangements--do not guarantee "right" or "wise" decisions. This is, of course, one reason why those who are primarily concerned with the substance of major policies and strategies look somewhat suspiciously at the student of organization. In their view, to focus on organizational arrangements is in effect to miss the most significant questions of policy substance. This is without doubt a possibility, but there is no reason why it must inevitably be the case. Furthermore, over the long haul, serious attention to organizational arrangements are bound to have favorable consequences as regards the substantive quality of decisions made and programs implemented.

All of this suggests that a certain skepticism is in order with regard to continuing efforts to reorganize all or various parts of the governmental machinery for national security and foreign policy-making, either by ambitious broad-scale efforts or by "tinkering" with the structure here and there. Among other things, it should be kept in mind that each of these changes involves disruption, readjustment and considerable loss of time for all or most of the personnel involved. Furthermore, it is perfectly clear that efforts to fix some of these changes by statute introduces unnecessary

rigidity in what should be a relatively flexible situation. This comment applies particularly to possible reform of the Executive Office of the President. Each President is going to have his own particular definition of his role, his own style of work, his own special competences in the administering of his office. This would seem to argue for as much statutory flexibility as possible in the organization of the Executive Office and the immediate White House staff. This is not to say that no legislative definition and framework are called for, but rather that there should be room for the individual incumbent to maneuver in terms of his own personality and view of his needs and problems. [6]

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[6] It will be interesting to see what changes, if any, are made in 1961 by the new President vis-à-vis the further routinization and institutionalization of White House and Cabinet procedures introduced by the Eisenhower Administration

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As to detailed "tinkering" with the structure, a strong argument can be made for the case that the major units involved have gotten to the point where they are in a better position to do this sort of thing than the scholar or even the outside study group. Furthermore, there is modest innovation going on all the time in most of these organizations. For example, the Department of State seems to handle its routine, day-to-day problems with reasonable efficiency and dispatch; the structure seems to have some flexibility and adaptability--modest changes and alterations are being made all the time, and, finally its personnel demonstrate considerable self-consciousness and understanding about how the machinery operates and what some of its problems are. Under such circumstances, it seems presumptuous for the outside observer to attempt to recommend quite minor adjustments although, of course, no hard-and-fast rule can or should be made about the matter.

Two further points should be noted in conclusion. Some observers

apparently expect the foreign policy process to work with the precision and perfection of a fine watch. On the contrary, irritation, frustration and just plain vigorous disagreement are not only inevitable but desirable. Given differing departmental responsibilities and a great variety of professional and functional perspectives, it is inevitable that differences, sometimes strong differences, will arise both over major policy decisions and the details of policy implementation. On the face of it, there is nothing inherently bad about strong argument and disagreement between the Bureau of the Budget and the Treasury on the one hand and the military establishment, or Department of State, on the other. Equally, it is not surprising that the State Department and the Defense Department should occasionally differ on the military assistance program, and that the State Department and the Development Loan Fund should not always see eye-to-eye on programs of aid to the underdeveloped countries. Such disagreements are not necessarily unhealthy or non-productive. However, if they are to be productive, certain supporting circumstances are required (and they are not always present!). First, where there is vigorous disagreement, the issues and alternatives must be brought before the official who is in a position to decide with appropriate sharpness and clarity so that he sees and understands the choices involved. Issues must be faced rather than diluted or avoided completely. Second, there must be vigorous and able advocates for all the relevant points of view. Third, once decisions are taken by those with the necessary power and responsibility, they should be followed up and compliance assured.

Finally, it must be said that even the best possible system, with an organizational structure suitably strengthened by the kind of characteristics discussed above, cannot <u>guarantee</u> the "right" decision in any particular case or instance, even though the problem at hand may represent the kind of turning-

point decision which could mean much more in terms of consequences than a myriad of routine decisions capably and efficiently handled. Foreign policy-making is always dealing with a world full of uncertainty, with chance elements and events that simply cannot be anticipated, inevitably incomplete information in the hands of the policy-maker, factors in the situation that are simply not in the control of those who must make the decision. Thus, all that can really be aimed for is a system in which "wrong" decisions will usually be those where there were chance developments that could not be anticipated or factors that could simply not be controlled or manipulated

III. Some Major Problems and Suggested Research Foci

As one surveys ongoing research in the field of American foreign policy-making, a double impression emerges. An increasing number of analytical and theoretically-oriented studies have either appeared or are under way while at the same time there are still significant gaps both with regard to major substantive problems left relatively untouched and major shortcomings as regards more theoretical and truly comparative research in this field. Regarding the executive side of foreign policy-making, it is still fair to say that most studies tend to be non-theoretical in approach. For example, agencies, institutions, and relationships are still studied in their own terms, with little or no effort to connect foreign policy-making patterns and problems to what might turn out to be similar manifestations in other non-governmental bureaucratic structures, or simply to formulate the problem or question in the sort of general terms which might suggest wider relevancies. Both the student of foreign policy-making and those who study other complex organizations would stand to gain thereby.

The explanation for this scholarly parochialism is no doubt complicated, and there would seem to be little advantage to attempting to examine it here. What does seem incontrovertible is that the situation described is both undesirable and unnecessary. Thus, in suggesting two major areas of possible fruitful research, one will represent a concrete foreign policy organization--the Department of State, while the other will represent a rather general problem--maintaining a high quality of intellectual effort in a bureaucratic organization.

Actually, it can be argued that the latter problem, while of general interest, has particular importance in the field of foreign policy-making because of some of the distinctive characteristics of foreign policy problems and decisions. [7] This topic may therefore represent an area where the

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[7] Interestingly enough, very little attention has been devoted to the question of what distinctive characteristics foreign policy decisions have, if any, and the consequences these characteristics might have in terms of problems faced by the foreign policy organization as compared to other bureaucratic structures. This would seem to be an avenue worth at least some exploration, and the fact that it has not been pursued seems to reflect further the lack of a theoretical and broadly comparative orientation on the part of many who study foreign policy-making. See the effort to suggest some possible differences in foreign policy-making decisions in Richard C. Snyder, et al., Decision-making as an Approach to the Study of International Politics (Foreign Policy Analysis Project, Princeton University, June 1954), pp. 66-67.

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study of foreign policy-making can make an especially useful contribution to a more general theory of complex organizations.

The essential question is how to develop and maintain a system which encourages and produces a high quality of intellectual effort while at the same time carrying out the integration of efforts and viewpoints and the procedures of communication and coordination entailed thereby, which are necessary in a very large and complex organization? Obviously, under con-

ditions where there are a large number of agencies and units, with a great variety of relevant responsibilities, policies, and programs, there must be procedures which work to assure development of agreed policies and coordination of related programs and activities. Furthermore, given the great range and complexity of the problems with which the foreign policy organization must deal, the various analytical skills, functional perspectives and specialized information which these agenceis can and do contribute would seem to be quite necessary. Thus while such words as "communication," "coordination," and "integration" tend to become shipworn clichés, they represent or point to unavoidable realities and necessities in the formulation and implementation of foreign policy.

That is one part of the picture. The other underscores the fact that the foreign policy process is in one sense fundamentally an intellectual process. It is therefore to be hoped that the foreign policy of the United States will rest on the most intensive and systematic collection and interpretation of relevant intelligence data, on analyses of problems and policy alternatives that are keen, logical and yet not without imagination and insight, on presentation of policy issues to the highest policy-making levels in such a way that issues, costs and anticipated consequences are clearly and sharply delineated and a sense of the complexity of the issues and the range of choice clearly communicated. In other words, somehow, in this complex bureaucratic structure, intellectual integrity, keen analytical abilities and a creativity of thought and perspective must be encouraged and maintained. [8]

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[8] The general problem of intellectual creativity in a bureaucratic structure is approached somewhat differently but discussed most provocatively and insightfully in a recent essay by Henry A. Kissinger. See "The Policymaker and the Intellectual," The Reporter, Vol. 20, No. 5 (March 5, 1959), pp. 30-35.

Other requisites can be added to the two fundamental ones already noted. The system must have the capacity to respond to problems not only wisely but if necessary quickly. Thus, ideally, the foreign policy organization should be able to act on the basis of well-coordinated policies and programs, which have solid and substantial intellectual bases, and, if need be, quickly as well. Another requisite which should be added is the capacity for long-term planning and anticipation of policy problems. As a matter of fact, on the basis of an apparent assumption that the systematic effort to anticipate future problems and plan for them on a long-range basis is not something that can be successfully carried on within the present foreign policy-making machinery, it has recently been suggested by some that an agency similar to the Rand Corporation be set up to provide such perspective and such analyses to the foreign policy organization.

In any event, these would seem to be among the fundamental requisites for a successfully functioning executive structure for foreign policy. It would no doubt be a considerable understatement to say that these requisites are not completely compatible with one another. The need to coordinate, to integrate perspectives and programs, often produces the watering down of differences in intelligence estimates, analyses of problems, and policy and program recommendations. Dulling the sharp edges of intellectual disagreement is sometimes the price that is paid for getting interdepartmental agreement and cooperation. Another consequence of the intradepartmental and interdepartmental clearances and concurrences that are the working procedures of coordination is a certain inertia in the system. This should not be exaggerated because it is possible to produce decisions and policies very quickly if the need is seen as sufficiently great, but there is no doubt that the processes of decision are often both slow and cumbersome. There is also a point

where the production, distribution, exchange and revision of papers--again, necessary in this kind of intellectual enterprise--becomes absolutely overwhelming. The drafting and redrafting, the subtle nuances of meaning and interpretation, the considerable number of people who have a hand in the drafting of a particular paper, the clearances and concurrences that must be obtained--clearly, this massive paperwork becomes at a certain point stifling and unproductive and the additional contributions made by new hands and new perspectives rapidly diminishes and in the end must be far outweighed by the costs of delay and underemployment of highly-skilled people. But how is this flow of paper to be controlled and made manageable? Are there devices or techniques for doing something about this, or does the answer lie essentially in the experience, skill and sophistication of the people in the system?

In any event, the problem of maintaining intellectual creativity and keeness in a bureaucratic structure while at the same time meeting the other essential needs of the system has a much broader range of relevance than the field of United States foreign policy-making organization, and one would assume that there may be something to be learned from the work of other students of organization on this question. It should be noted that this is not even the sort of question that seems to interest students of United States foreign policy-making. The paperwork, the clearances, the partial inertia of the system, the mediocre quality of much of its intellectual effort seem to be characteristics of the system accepted as "givens" rather than as factors to be analyzed and perhaps remedied in some modest way. The assumption may be that this is not a problem that can be dealt with directly but must rather be met by improvements in personnel or in the vigor of top-level direction. About the only area that does get some attention

is the machinery established for inter and intra-departmental coordination, which is, after all, merely one part of the larger problem and perhaps more symptomatic than at the heart of the matter.

The Department of State

The last few years have been marked by an impressive growth of academic and scholarly interest in the American military establishment: military doctrine and strategy and its relation to broader national strategies and policies; the nature, characteristics and foreign policy consequences of various weapons systems; military organizational arrangements and the participation of the military in broader national policy-making; the character, qualities and training of the American professional military officer. Some excellent research has been done on all of these topics, and more is promised. Most will agree that a shift in the focus of academic interest in the military from the earlier civil-military relations approach which tended to accept civilian supremacy or control as the overriding value and study military activities from that perspective to the less normative, more analytical concern with the nature of the military establishment and its professional personnel, their responsibilities and problems, their role in national policy-making, and the consequences of their doctrine, policies and programs in terms of the national security of the United States has been most desirable. In sum, while fears and anxieties regarding the military have by no means disappeared from the public scene, they do seem to have quieted down considerably in recent years and been replaced by a growing acceptance of the necessity of the military role, perhaps even some positive appreciation of the contribution made by the professional soldier and the military establishment to national security, and, finally, by some solid academic research on the

military establishment and its activities.

These comments on the burgeoning academic interest in military factors and forces are in part prelude to the point that this growing attention to the military has by no means been accompanied by similar studies of the organization of major civilian agencies in the foreign affairs-national security field, most notably the Department of State, or of various aspects and implications of the use of the other, non-military instruments of foreign policy. For example, some very interesting analyses of the foreign policy implications of nuclear weapons and inter-continental missiles have been done, but apparently no equivalent efforts are being devoted to the more imaginative and self-conscious use of other policy instruments. Obviously, in some ways military weapons and doctrine are more amenable to "gaming" and similar techniques than political, diplomatic and propaganda doctrine and tactics[9] but

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[9] In this specific field, there are some interesting efforts now being made. See the panel at the present meeting reporting on "Games and Simulation in the Study of International Affairs."

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certainly these are at least as important, particularly if one assumes that the considerable effort being devoted to military preparations will prevent actual resort to force and certainly to all-out nuclear-missile war. Probably the one exception to what has just been said is in the field of the underdeveloped or, as some would now have it, un-developed countries. Here a considerable amount of scholarly work is being done both on economic aspects and, also, increasingly, on some of the broader political and social factors which represent the limiting framework within which economic development must take place.

It is probably quite accurate to say that a good book on the organization of the Department of State has not been published since the beginning

of World War II (or should one say World War I). There have been useful materials incorporated in various official studies and in broader analyses of the administration of foreign affairs in the United States. Given its generally acknowledged central position in the foreign policy field, this is a rather amazing state of affairs. [10] It would be agreed that the character

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[10] Professor Robert Elder's forthcoming volume on the Department, The Policy Machine, to be published early in 1960 by the Syracuse University Press, will provide a partial remedy for this situation. However, even it can represent no more than a beginning in an important and largely untouched area.

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and quality of State Department organization and personnel are equally as important to the national security as those of the military establishment. The major differences are in size and cost. The military establishment is, of course, much larger and represents an extremely high proportion of the national budget and, even, the Gross National Product. This is no doubt part of the explanation for the greater attention it has received.

In any event, it seems undeniable that more scholarly attention should be paid, among other matters, to how the Department does its work, the nature of its personnel recruitment and in-service training, [11] and its capacity

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[11] It is encouraging to note that Professor John W. Masland, in collaboration with Gene M. Lyons, is engaged in a study of the educational preparation of civilian officials for responsibilities in national security policy-making, which will presumably provide a companion volume to the Masland-Radway study of military education, Soldiers and Scholars (Princeton, 1957). Considerable attention is being given to the Department of State in this study.

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for long-range planning and for imaginative thinking about policy problems.

It may be useful to attempt to characterize some recent developments in the organization of the Department and then indicate research questions that they suggest. For example, within recent years a number of functional specialties--public affairs, legal advice, economics--have either been

brought directly into the regional bureaus or more closely connected with them. For those who are interested in the problem of the integrating of various functional perspectives in the foreign policy field, the regional bureaus of the State Department would seem to present a likely research target.

Some interesting changes in the relations between the intelligence bureau in the Department and the geographical policy desks have been brought about by the Wristonization program. The Bureau of Intelligence and Research is now being directed by a Foreign Service Officer and to a considerable and increasing extent being staffed by Foreign Service Officers. Some observers feel that this is not the happiest of developments in terms of the quality of intelligence that will be produced and, also, in terms of the most appropriate kind of relationship between intelligence analysts and policy officials. As with a number of other important organizational relationships in the foreign policy-making field, this particular development is recent enough to be in the process of "shaking down", and thus it might be rather difficult to research satisfactorily at this time. However, it does seem rather striking that since Roger Hilsman's work a number of years ago, [12] no one has looked

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[12] See Strategic Intelligence and National Decisions (Glencoe, Ill., 1956)

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into the question of conceptions of intelligence held by both intelligence analysts and "operators" and their role definitions and organizational relations. Leaving aside the possible difficulties just noted, the study of relations between the Bureau of Intelligence and Research and the regional bureaus in State, in terms of role definitions, reciprocal expectations, various conceptions of the intelligence process and the uses of intelligence in policy-making, and the quality of the intelligence products as far as this can be inferred from interviews, would be extremely useful as well as interesting.

To the outside observer, the State Department has sometimes seemed in the postwar period to be less than fully effective in carrying out its presumed role of foreign policy leadership. Undoubtedly much of the explanation for this lies in factors beyond the Department's control. However, there has been some tendency on the part of the Department to respond to the new agencies, new skills and new personnel introduced into the foreign policy field by remaining essentially assured of its own primacy and unexcelled foreign policy competence, resenting the intrusion and activities of these new units, but at the same time making little effort to master the new programs and some of the new skills. In addition, the Department has sometimes been in the position of resisting innovations in the policy-making structure with the view either that the function in question did not need to be performed or that the Department was already taking care of it in a satisfactory fashion. Others disagreed, and thus State has found itself in the position of first resisting and then accepting with little enthusiasm the National Security Council structure, the Operations Coordinating Board, and, one might add, the long-range policy planning responsibility. This is not to imply that there were not and are not weaknesses of conception and structure in all of these. Nevertheless, many knowledgeable observers saw significant needs inadequately provided for by the system, and both the National Security Council and the Operations Coordinating Board have been efforts to fill such needs. The view of many involved in foreign and national security policy-making is that the State Department has not taken vigorous hold of these units, that they need and would respond to State's leadership, but in good part do not get it.

This is, if you will, a rather lengthy indictment. No doubt it is overstated, and it certainly does not pay appropriate tribute to the many strong assets of the Department and the vital contributions made by it.

However, if the critique has some validity, how is it to be explained? Is it simply a question of new and inexperienced agencies and personnel pushing for institutional innovations that really were not going to make much difference, as the wiser heads at State clearly saw? Or was it an inevitable consequence of a once-dominant agency having to adjust rather quickly to the presence and activities of a number of vigorous competitors, often with quite large and expensive programs under their control?

If these explanations seem overly pat or simple, then answers must be sought elsewhere. For example, do these resistances and reluctances suggest hypotheses about the kind of personnel the Department recruits or, more specifically, about the Foreign Service? Or do the range of tasks normally performed by Foreign Service Officers in the course of their careers produce certain perspectives, attitudes, ways of approaching and thinking about problems? If we are interested in what may be labelled in short-hand fashion the "military mind," there seems to be no reason on the face of it why scholars concerned with national security and foreign policy should not be equally interested in the "Foreign Service mind."

It is interesting and perhaps indicative that although a number of former members of the Policy Planning Staff have now retired from the public service, no scholarly effort has been made to study and evaluate the Staff as it operated, say, until 1953. Given the quite small size of the group (eleven in all), much could even be learned about its role and activities in the period since 1953 by some careful interviewing. Commentators have criticized the Staff and questioned the adequacy of its performance in its supposedly primary task of long-range foreign policy planning and analysis, but little scholarly attention has been devoted to either the present activities or historical development of the group. Certainly under circumstances where

a number of its former members are now out of the public service, the problem of security and of access to busy people cannot be a fully satisfactory excuse.

IV. Conclusion

Anyone so foolhardy as to comment on problems of method and likely research targets in a particular field must expect to conclude with the feeling that he has done more to reveal his own ignorance than to strengthen research. Other interesting research topics could be mentioned. For example, the developing role of scientific agencies and advice in foreign policy-making merits attention, as does the problem of recruiting able personnel for the political and Schedule C positions in national security and foreign policy departments. However, it is hoped that enough has already been said to sustain at least the basic point that there is much important research still to be done in this field.

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THE ROLE OF THE OPPOSITION IN ASIA

by

Robert A. Scalapino

If Gilbert and Sullivan were still alive, it is difficult to see how they could resist doing a new opera with an Asian theme, a major sequel to The Mikado. It would be based upon Asian party politics where the material for both story and song is endless. Consider the specter of the opposition dragging their mats and teapots into the legislative chamber in preparation for a physical filibuster. Imagine what could be done in song with a situation where the opposition is commanded to come into existence and forced to stay alive so that nobody can assert that democracy is absent. And real slapstick comedy is also available: visualize the scene where the opposition blows up the city waterpipes on election eve as its campaign finale.

Certainly at some point, the authors would want to paraphrase their famous policeman's song, for truly, in Asia, the opposition's lot is not a happy one. Indeed, on second thought, our theme should not be handled by Gilbert and Sullivan; if it is to be treated as comedy at all, it should be played by Charlie Chaplin so that pathos and tragedy can have their due. For in fact, it is the latter elements that dominate the scene.

For nearly half a century, Asia has been gripped by a seeming paradox. On the one hand, her political elites have been increasingly committed to the theory of democracy. They have embodied it as a supreme value and insisted that its name be invoked on their behalf. They have muttered and made extensive use of its

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symbols and terminology. They have discovered ingenious ways of applying some of its techniques: elections and other forms of mass participation. But on the other hand, these same elites have been progressively disillusioned with the practice of democracy, at least in its so-called Western form, and thus driven to seek substitutes, subterfuges, or delaying operations.

Democracy is the great ideal, but the practical theory that dominates most of Asia today, irrespective of its precise ideological coating, is the theory of tutelage. This is the theory that the elite must guide the masses in their present condition of backwardness and helplessness, and that the state must serve as an educative force if modernization is to be hastened. It is in this context that the problems of Asian opposition movements or parties must be viewed. And there is yet another problem, broad in its dimensions. If the Asian political elites are widely separated from the masses, they are not separated from their culture; at least, they are not totally separated from it, whatever portion of them may be expatriate in mind and action. Thus they must bridge the gap -- first, within themselves, and then if possible, with their society -- between those methods of political thought and action which derive from their culture and those which are required if competitive politics in the Western mold are to operate with hope of success. Naturally, culture changes, and Asian societies may be evolving toward social systems that can underwrite culturally the premises of competitive politics. Even if this be true, however, these societies are not changing rapidly enough to accommodate many democratic ideas that have flown like guided missiles into the hearts of their "vanguard" elite. It has always been possible for ideas to have a somewhat independent existence from any given social context, since they can be products of free roaming minds. Never has this been more true than in our present

strongly interdependent world where subtle minds can suddenly skip centuries as well as continents. But the social content will ultimately demand its price; a day of reckoning can be postponed by artful adaptations but it cannot be totally avoided. To move from Western theories to Asian realities -- to face pragmatically the problem of survival, and then, having survived, to write one's own theory or rewrite that of others -- these are the challenges that Asians now feel and to which, in some measure, they are responding. The role of the opposition must also be viewed against this scene.

The role of opposition parties in Asia can first be explored by examining the nature of Asian party systems. We might commence with the one-party system where legitimate opposition cannot or does not exist. Is there such a system in Asia? The surprising answer, if one accepts the visible signs, is "No." Communist China does not have a one-party system. Indeed, a number of parties exist in addition to the Communist Party: the Democratic League, the Revolutionary Committee of the Kuomintang, the Democratic Reconstruction Association and others. These parties generally predate the Communist victory, but they have been commanded to stay in existence, or in some cases to organize. "Proper" leaders have been established, and to insure the minor parties against total defeat, a certain quota of seats have been assigned to them, an act of generosity that minor parties elsewhere might relish.

Why are the Communists so insistent that these parties be kept alive by a rather laborious process of artificial respiration? It is not because they want the "objective appraisal" of their statecraft by a detached but safely minority element. Criticism in a totalitarian society to be safe or legitimate must always be introspective or designed to support the regime; it must be self-criticism

or criticism that rests upon Marx-Lenin-Maoist premises. In a regime like Communist China, opposition is not a function of a party, but of an individual or group within the party, and meaningful opposition can usually come only from those occupying positions of high prestige and trust. Democracy under Communism is a privilege of the highest elite, and it takes place in camera, and within the party. Opposition can only be an internal process, because no one else can be entrusted with such a dangerous weapon.

The real function of these minor parties is not to oppose but to ratify. But this ratification is for something more than the immediate Communist policies. In the broader sense, these parties ratify the Communist theory of history -- this is their most essential function. The Chinese Communists always supported the two-stage theory of revolution, with the first stage being the bourgeois-democratic revolution. In practice, this stage cannot be realized, but the Communists pay some homage to it by their concept of a coalition of "revolutionary classes" -- the workers, peasants, petit bourgeoisie, and national capitalists -- under the leadership of the Communist Party. In the transitional era prior to the establishment of socialism, therefore, there must be representation for these classes that are neither vanguard nor enemies. This is a Communist adaptation of Western-style democracy, a managed "bourgeois-democratic" stage, with sanble parties that play the game in accordance with its very special rules.

Meanwhile, the National Government on Taiwan operates in curiously parallel fashion. Perhaps few people know that the Kuomintang since 1924 has been patterned after the Communist Party organizationally, down to its cell branches. And indeed, the Kuomintang preceded the Communists in Asia with the theory of tutelage and a one-party dictatorship. This was intended to be education for constitutionalism,

however, not for a Communist society. Gradually, minor parties were allowed to creep along the edges of political power. The need for such parties was even greater in the aftermath of total defeat, because the Kuomintang then wanted to appeal to Western democracies, especially the United States. Thus groups like the China Youth Party are arranged in life-like positions to prove that democracy does exist.

We shall be perverse enough to insist that these are still one-party systems. They differ greatly in atmosphere, mode of operation, and goals. In all such situations, however, meaningful opposition comes only from within the government party. "Opposition" parties not only do not oppose; they do not really exist. The groups that do exist are intended to represent some homage being paid to the democratic system, but these regimes are not prepared to run the full risks of that system, and in the case of the Communists at least, shielded by their theories against such painful contemplations.

It would seem logical to move from a discussion of the one-party system to that of two parties, but this would cause a very important omission. Probably the most important party system in Asia today is the one and one-half party system.[1] Defined simply, this is a system where, for a variety of reasons, there is one clearly dominant, and seemingly impregnable party, and the other party or parties play the role of permanent minorities, helpless, hopeless, and often irresponsible. What produces this phenomena? Consider the nature of these societies and their problems. One group of states has recently emerged from colonialism, and in a

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[1] I am indebted to Professor Junnosuke Natumi of Tokyo Metropolitan University for suggesting this term to me.

number of cases, the nationalist movement that attained independence was able to transfer its leadership, organization, and goals more or less intact into the new era. In this fashion, it could secure a position that was invulnerable, at least initially.

For many Asian states, the one and one-half party system is a logical product of the economic, social, and political factors governing the society. In some instances, the elite truly available for a national party movement is too thin to spread over more than one major party, especially when one leader frequently emerges as the charismatic figure, casting a shadow over all others. Moreover, while a late-developing society in rapid transition will contain within it an enormous range of attitudes and positions, few of these will find effective political representation, especially at the national level. The masses of whatever socio-economic category are weak in political consciousness and susceptible to external leadership. Interest or pressure groups that might faithfully reflect political differences and serve as the nuclei of political parties are few, and very unbalanced in their strength. Only a small segment of most of these societies is prepared to be articulate politically on behalf of its interests, and this segment is likely to come from the same general socio-economic element. Thus the political base is very narrow and the power balance between basically competitive groups is very uneven.

There is yet another factor that weighs on behalf of this system, namely the use of corruption or force by the dominant party so as to maintain power. The voluntary relinquishment of power is perhaps the most difficult of all political ideas to realize in fact, especially in societies where office-holding is the chief or only route to wealth and influence; there to leave oneself to the mercy

of one's opponents has dubious precedent, since minority rights are honored mainly in the breach; and where, in some cases at least, the ideological gulf is too wide to permit change without revolution. It must also be remembered that corruption is a relative term. The prequisites of high office have always been equal in Asia to the difficulties involved in obtaining it.

It is not easy to demark precisely which Asian nations should be called one and one-half party states. Some are on the border-line. Others appear to be going out or coming into this category. For purpose of illustrating the problem of the opposition under such a system, however, we should look briefly at three rather different types: Japan, Korea, and India.

Japan, of course, is usually considered a two-party state, but it fits our definition of the one and one-half party system. The conservatives have consistently polled some two-thirds of the votes since 1945, and the massive Liberal-Democratic Party today holds just short of that number of seats in the Japanese Diet, along with the great majority of prefectural and local offices. The major opposition party, the Socialists, hold about one-third of the seats, and the Communists poll a negligible 3% of the vote.

The strength of the Liberal-Democrats is due to many causes. Essentially it is a product of socio-economic factors that lie deeply imbedded in the past and present of Japanese society. Social change is now being accelerated, but this has been a profoundly conservative society with a high degree of hierarchy, discipline, and obedience, especially in the rural areas. But the conservative position is abetted by their superiority in funds, known leadership, and administrative experience. They benefit also from the weaknesses of their opponents, the Socialists, who are badly torn by ideological cleavages.

The Socialists, as a perennial minority, face three interrelated and basic problems. The first is how to avoid the irresponsibility that goes with any long-sustained absence from power. The Japanese Socialist Party, having never had full responsibility for national policy, has no legacy of policy to defend. If the business of the opposition is to oppose, the Japanese Socialists are an opposition in the best tradition. But their opposition, unfortunately, knows no nuances, no subtleties, no suggestion that the ruling party is less than completely wicked, or that politics, to be healthy, must be partly a game. All is fortissimo, in shrilling doctrinaire tones. Indeed, the Socialists still wrestle with the fundamental question of whether they are totally bound by parliamentarism, or whether direct action in some form is not necessary and legitimate. Many socialists are unconvinced that they can attain power by parliamentary means, or at least, by this means alone. Thus the issue of whether the Japanese opposition can be considered "loyal" is a difficult one to answer.

This problem relates to a second one, the psychology of the Japanese Socialists, their image of themselves and their society. It is perhaps in the nature of a perpetual opposition to see the future in totally dismal terms. The Socialists play the role of the besieged minority fighting with their backs to the wall against the rising tides of Fascism and the police-state. This is a desperate view of themselves and their society, and fitting a course of either extremism or despair. And indeed, there is a bit of both. Japanese Socialists often seem helpless, hopeless, and afraid of power. One becomes accustomed to a role, if it is played long enough; the Japanese conservatives know only how to govern and the socialists know only how to criticize. It is uncertain as yet whether they can ever successfully interchange their parts. Until this is discovered, can Japanese democracy be considered established?

Yet another difficulty confronts the Socialists, that of modernization. Ideologically, the party is divided into two major groupings, the right-wing social democrats and the left-wing Marxian socialists. Leaders and programs on all sides, however, have an old and tired appearance, and sould like echoes from the misty past. To have been in opposition for more than one generation, and still to be fighting with the same weapons seems in itself a deadly form of conservatism. But to modernize without having the power to test one's theories against practice is extremely difficult. It is generally the movements that are powerless and without hope of power that are most doctrinaire; in one sense, they alone can afford to be pure. Pragmatism is most easily achieved when it comes as the product of necessity in the context of experience.

Before advancing any generalizations, let us look at Korea, another so-called two-party system that might be reclassified. Korea now possesses two parties, the Liberal and the Democratic Parties, both eminently conservative; the leftist Progressive Party has now been banned, and one of its leaders, Cho Bong An, was recently executed on charges of contact with the North Koreans. The dominant Liberal Party under Syngman Rhee has increasingly solidified its power in recent years despite certain electoral setbacks in urban centers. In solid control of the Presidency and the National Assembly, the Liberal Party has recently legislated itself into control of all local and district offices except that of town council, by amending the Local Autonomy Act to make these offices appointive instead of elective. The power of the central government now extends automatically into each village of the land.

In the elections of 1952 and 1956, the Liberal Party demonstrated that it knew how to use its power. It did not hesitate to use army, police, or other

instrumentalities at hand to coerce where it could not persuade. Election interference particularly in the rural areas, was rampant. And Democratic Party organizers continue to find obstacles to their work overwhelming. Arrests are made on the most trivial charges; ingenious methods of harassment are invented; some districts test the courage of any opposition man who would enter. There seems no end to the handicaps under which the Democratic Party can be placed. Businessmen supporting that party may find their sources of credit gone and their assets controlled. Men in need of employment have special reasons for belonging to the "right" party. One may even be called pro-Communists if one supports the opposition. It takes courage to be an active opponent in Korea today. Korean politics have a hobbesian complexion -- they are short, nasty, and not a little brutish.

There is another side of the picture, of course. Given the numerous travails through which Korea has passed in recent years, perhaps it is a miracle that any semblance of freedom exists. Indeed, given all the facts, a substantial case can be made out for authoritarianism as the most realistic approach to the problems of this era. Korea needs a benevolent despotism to tutor the people, it is often said; whether the present regime has the type of dynamism and dedication to progress implied by this statement, of course, is another question. In any case, Korean politics are increasingly vigorous, whatever the restraints, and in the urban centers, remarkably free. The cities have become Democratic strongholds, partly because these voters cannot be so easily intimidated. Even in the rural areas, the crudest forms of coercion appear to be giving way slowly to more subtle forms. The moderate Liberals favor a greater emphasis upon legitimate democratic techniques: the use of public works, constituent services, and similar measures to woo the voter rather than to threaten him. But at the moment, both persuasion and coercion are in evidence. And Liberals with a troubled conscience have one satisfying excuse: "The Democrats would be worse, if they were in our position!" It is barely possible they might be right.

An opposition under these circumstances cannot be much more than half a party, living always close to the shadow of suppression, violence, and banishment. These conditions breed desperation and defeatism, and both are present in the Democratic Party to some degree. It was the Democrats who staged the notable legislative sit-down strike in December, 1958, bringing the essentials for living such as mats and teapots onto the floor of the Assembly. It was to no avail. The government brought in auxiliary police, dragged the opposition out, locked them in the basement, and passed twenty-four basic laws in record time, including revisions

in the National Security Law and in the Local Autonomy Act, both of which were turned into sharp weapons against the Democrats.

A number of Democratic leaders have shown notable courage, but it is not surprising that defeatism and lassitude eventually sweep over many members. "What can we do?", they say. "If the United States will guarantee the freedom of the next elections, we will win, but we cannot hope to meet this illegal pressure by ourselves." And sometimes it may be suspected that lamentation is substituted for action, that many Democrats are content to take solace in the theory that they could win under conditions of fairness, and do less than they should - or could - to defend and advance their cause. The number of heroes in any society is very limited; a little coercion can go a long way.

Under conditions such as prevail in Korea, what is the function of the opposition? In practical terms, it is first, to stay alive, and to devise means of combatting oppression. Beyond this, it is naturally to find some method of coming to power. There will always be a certain temptation to use violence, to answer illegality in kind; some doubts as to whether parliamentary tactics will suffice are inevitable. The government in turn can use evidence - even the slightest evidence - of this tendency to justify its controls. Thus the political game becomes a question of which tactics will be permitted and which will lead to suppression. A constant testing is taking place of the degree of freedom possible. At the same time, a certain passive (occasionally active) contemplation of alternatives to this cautious policy occurs, ranging from thoughts of individual terrorism to those of non-cooperation or revolt on a massive scale. As opposed to the situation in totalitarian societies where basic opposition is totally submerged, the Korean opposition movement is an iceberg, with the visible portion being much the smaller, but varying in size and substance with the times.

India represents still another variety of one and one-half party society both in terms of causation and result. The Indian Congress Party, in spite of its various weaknesses, has totally dominated Indian politics from the moment of independence. Notwithstanding certain real challenges that now appear on the horizon, it seems likely to retain national supremacy for the foreseeable future. The basic reason for Congress strength can be summed up in one brief sentence: It inherited the assets of the nationalist movement almost intact. It came to office not only armed against the past with the image of Gandi, but forearmed against the future with the presence of Nehru. Congress had charismatic leadership, living and dead, but it had something else, namely a vast array of lesser heroes, functionaries, and men in the ranks, an array that stretched backward in time and outward in space, covering every province and district of the new nation. Only through Congress could India be a nation. Thus as long as it could preserve its own unity, this represented an incalculable advantage. There was no other national image, no other group prepared to think and act in national terms. Congress alone could collect the belated reward of labors covering half a century and more, labors that involved organization as well as ideas. But the Congress Party did embody aspirations and goals to which few could take exception.

"What can they possibly oppose?" responded one prominent African leader recently when asked whether he envisaged an opposition party to his nationalist movement after freedom had been achieved. "Will they oppose economic planning and development? Improved health and sanitation for our people? Better education for our children?" To this, one could only add, "Mother?" This is an oversimplification, to be sure. There are many things that can be and are opposed in the initial stages of independence. Some actions and ideas are opposed in the name of tradition, others in the name of progress. The most spontaneous opposition

will have a personal character, and represent a struggle for power. Provincialism is almost certain to be the major impersonal source of opposition, for nationalism wins no easy victories among late-developing societies. Indeed, it is because of these and other hazards that the concept of opposition is under a cloud in much of Asia, regarded as of dubious value to a newly emergent society where the premium must be upon unity and progress.

This problem has been taken seriously enough by one Indian opposition leader, Asoka Mehta of the Praja Socialists, to cause him to advance a theory of limited opposition. Mehta's theory is that at the very most, the main function of the opposition during this period should be to guard against specific instances of poor administration and law, but to accept the fact that a broad area of cooperation between the Socialist and Congress parties is necessary and possible. Indeed, Mehta has gone further to suggest a moratorium on party politics for a decade while a national front government launches the critical phases of economic development. There is some connection between this concept and the Sukarno theory of "guided democracy" for Indonesia.

Thus the character of the opposition in newly emerging societies may be shaped partly by self-imposed restrictions, as well as the limitations, natural and man-made, which operate against it. Opposition to the Indian Congress Party exists from sources other than the Praja Socialists; the Jan Sangh and the new Swatantra Party currently represent conservative groupings of more than regional significance. But in most respects, the opposition party to Congress is the Communist Party of India. Although the CPI does not constitute a serious threat to the Congress Party in terms of national strength, it does have particular power in a few states, notably Kerala, Andhra, and West Bengal, as well as rather general strength in the great metropolitan centers.

The Indian political scene can serve to highlight certain aspects of the general role of the Communist Party as an opposition movement in Asia. In the first decade since World War II, the Communists have established themselves in most of the states of South and Southeast Asia as the only meaningful opposition, whether overtly or covertly, to the nationalist governments now in power. This may or may not be true after another decade, but for the moment, it applies with few exceptions throughout this area. In broad terms, the Communist Party is the half-party to the full party as represented by some nationalist group or coalition, if we wish to retain our concept of one and one-half party societies. Rarely does it pose a serious electoral threat to the nationalists, but it is strong enough to be a problem and a challenge.

Why has the Communist Party achieved this measure of success? The answer lies partly in the fact that the Communists have been the only "scientific opposition" in societies otherwise marked by extraordinary political amateurism. For many decades, the international Communist movement has been seeking to develop a science of opposition within parliamentary societies. Fortunately, that science remains inexact, but when compared to the general political tactics of an area like Southern Asia, the professional quality of the Communists stands out, especially in the chaotic, uncertain era since 1945.

The non-Communist parties of Asia, government and opposition alike, have generally been confused in recent years concerning both their goals and the methods needed to obtain them. This has been a period of rethinking and regrouping of forces. The Communists have had relatively clear objectives and a broad range of tactics from which to choose. They have used parliaments without being bound to them; moved from legal to illegal action, or used both simultaneously; they alone have taken maximum advantage of being an opposition, by seeking to capitalise on

every public grievance and developing grassroots organizations to propagandize their cause effectively. Above all, the Communists have benefited from the vacuum of power existing, and hence the great freedom of maneuver given them. Marx counted on the classic liberty of the bourgeois-democratic state to allow Communism to mature; the Asian Communists as an opposition movement have had the advantages of another type of freedom, that derivative from the state of near-anarchy that has prevailed in many parts of Asia since 1945. In this respect at least, the Communist movement is likely to feel a greater challenge in the future. Reins of authority are presently being drawn more tightly by national governments that survived their first decade in very precarious fashion with minimal power. The Communists face other problems as well: Their initial advantages in most cases were more than offset by the disadvantages for Communism implicit in the nature of these societies; they made their full quota of mistakes, moreover, and both their skill and judgment can easily be exaggerated. Nevertheless, the Communists must still be accounted the primary opposition to the government in power at present in such societies as India, Indonesia, Burma, Laos, and Vietnam, among other.

We have discussed Japan, Korea, and India as different examples of a common phenomenon, the one and one-half party system. In each case, it is possible of course to defend a different categorization, but the party systems of these states fit our general definition of the one and one-half party system, and serve to illustrate some of the basic problems of the opposition in Asia.

Is there then a truly two-party system operative in this part of the world? If one defines such a system as one where two parties have actually alternated in power, a system where the exchange of power has become regularized through free elections, then there is only one two-party system operative in Asia at present,

in the Republic of the Philippines. Perhaps this is an aberration due mainly to the character of American tutelage. It certainly cannot be ascribed to the degree of industrialization or some other broad economic phenomena that would set the Philippines apart from all other societies in its area. The real differences that currently distinguish the Philippines are socio-political: a nationalist movement that grew up as a moderate, legal movement, thus one that did not have to maintain its unity in the face of some adamant imperialism and had already been bifurcated prior to independence, with its two wings competing for power in elections held under American supervision; an unusually high degree of Western acculturation especially among the elite, and a fairly intensive indoctrination at the mass levels in the rudimentary principles and practices of political democracy. It cannot be ignored, of course, that the Philippines has an economic balance betwen resources and population that except for the special problem of Central Luzon gives support to political moderation.

Even the Philippines, however, has not always represented a paradise for the opposition party. The main problem has been that of having equal access to power, the central issue of free and fair elections as it involves the use of army, police, or local thugs, ballot-box stuffing, vote buying, and massive corruption.

There remain two other party systems in Asia which should be mentioned briefly before some general observations on the role of opposition parties are attempted. The multi-party system cannot be regarded as widespread in Asia if one uses a functional definition. It has been prominent in Indonesia, where religious, sectional, and socio-economic differences are pronounced, and where the nationalist movement was fragmented after the revolution, partly because its two most essential leaders, Sukarno and Hatta, sought to stand above party, unlike men like Nehru.

The multi-party system has had great advantages for opposition parties. It has accentuated their freedom on the one hand and their importance on the other. At the same time, it has also been the party system most conducive to political chaos and stagnation. Thus, Indonesia has joined various other Asian societies in moving to what might be called the half-party system. Throughout Southern Asia, a new form of tutelage has emerged recently, a tutelage directed either by the military or by a civilian-military team that has retired the political parties from active leadership, substituting non-partisan national or unity governments. The parties continue to exist, and may ultimately be called back into the scene. Most of these new tutors speak of themselves as caretakers, and have avoided taking those steps that would indicate a permanent commitment to power. However, party government has been set aside, and along with it, much of the right of opposition, as it would be defined in Western democratic terms.

The half-party system, the system of allowing parties to exist but strictly limiting both their power and their freedom, represents a movement that has rapidly gained momentum in South and Southeast Asia in recent years. Pakistan, Burma, and Indonesia have all moved in this direction. This cutback from Western-style institutions reflects the great ambivalence with which most of Asia views democracy and with it, the Western democratic concept of political competition.

Thus when one surveys the Asian scene, the position of the opposition appears almost everywhere to be precarious and uncertain. Under half-party systems, all parties are "opposition" in some degree, and if permitted at all, are only allowed to engage in carefully defined, minimal activities. "Opposition" parties live as house pets under the one-party systems of Asia, and at this point, they seem thoroughly housebroken. The one and one-half party system which is still central to so many parts of Asia varies greatly in the scope and leverage which it grants

to the opposition. In general, however, the limitations on effective opposition are considerable, and the appreciation of its function limited. Only the genuine two-party and multi-party systems grant the opposition its due, but these systems are exceedingly rare, and there is no indication that they will quickly increase in number.

There are two prices that must be paid for meaningful political democracy and both of them come exceedingly high in modern Asia. One is conflict. Conflict is a concomitant of a truly democratic society, but it is a conflict that accepts certain limits and operates in accordance with certain rules and principles, product of lengthy experience. Many Asians, even among that rather small group committed to Western political values, doubt that at this stage in their development, they can afford the kind of open conflict implicit in competitive party government. They are afraid that this conflict will merely exacerbate those provincial, tribal, and personal cleavages that lie close to the surface everywhere, thereby preventing unification and disrupting progress.

Cultural biases lend further support to these doubts and fears. Opposition has had many connotations in Asia historically, almost all of them bad. It is associated with disrespect for authority, regional or tribal jealousies and rivalries, and above all, personal antagonisms that are essentially based upon emotion. The concept of the rational, principled opposition is relatively novel. Traditionally, Asian interest was not in protecting the right to dissent, but rather in finding the greater harmony. And these societies are still sufficiently cast in the traditional mold to regard accommodation and compromise as supreme values. In short, most Asian societies have always operated strongly on the basis of consensus, and developed elaborate procedures to obtain a consensus.

This affects the image of democracy. Throughout much of Asia today there is

grave doubt as to the moral validity of majoritarianism. Why should 51 per cent of the people rule? Even if the representation were accepted as valid, which is rarely the case, the question would still be asked, for the traditional Asian answer would have rested either upon the concept of tutelage or consensus. In neither case, is this a theory composed of majority and minority rights. The significance of this is reflected today not only in the manner in which the opposition is regarded, but also in the way in which it acts. Because it has no trust in the majority, and no real assurance in its protection as a minority, it often tries to demand consensus and resist majoritarianism by every possible technique.

Yet another price must be paid for democracy - corruption. One cannot have freedom without corruption, using this term in a broad sense and purposely not seeking to define it too closely. But in an advanced democratic society like the United States, the critical forms of political corruption can be controlled. Indeed, that is one of the central functions of an opposition. In Asia, however, the nature of society prevents the opposition from controlling corruption; it cannot operate upon or through an articulate, alert public opinion. Corruption under freedom may thus become uncontrollable, and the opposition, impotent to prevent it, seems to serve no basic purpose for the society.

Both conflict and corruption are present under authoritarianism, to be sure, and perhaps they are present in more fundamental form. However, until ways are found, or the social evolution of Asia permits the containment of these forces under democracy, the full establishment of parliamentary institutions and freedom as we know these forces in the West, will be a rare achievement. Thus the role of opposition parties will continue to be limited and their existence precarious. In many societies, meaningful opposition will come more from within than from without the government, as tutelage takes precedence at least temporarily over

democracy. But the influence of Western liberalism in most of non-Communist Asia will remain strong enough to give some protection to the opposition as long as it is reasonably loyal and reasonably discreet. Perhaps one can ask for little more in an era of nation building, and boot-strap lifting, and when no one has time to wait.

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THE WARREN COURT AND STATE POWER

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Perhaps the single, most dramatic act relating to the contemporary prestige and influence of the Warren Court in federal-state relations occurred in August, 1958. It was then that the Conference of State Chief Justices adopted a resolution urging the federal Supreme Court to exercise judicial self-restraint in dealing with problems of federalism. The resolution stated that the "system of federalism . . . is sound and should be more diligently preserved."[1] The chief justices of the state supreme courts may properly be counted among the "literate"[2] critics of the federal Supreme Court. Furthermore, the split between those who supported and those who opposed this resolution was not along regional geographic lines. Significant numbers of northern and western chief justices supported the critical resolution.[3]

What factors contributed to this state of affairs? Has the Warren Court's conception of its role in American federalism been strikingly different from earlier conceptions? Have the justices of the Warren Court departed so radically from the traditional behavior patterns of American judges that they have been deservedly stripped of that deference which has customarily been accorded to members of the Supreme Court? Have the state supreme courts been staffed with justices who, in the contemporary scene, are qualitatively superior to the federal justices?

The highest state appellate courts, particularly those whose traditions antedate the Supreme Court of the United States, have produced eminent jurists such as Kent, Parsons, Shaw, Ruffin, Cooley, Holmes, and Cardozo. On occasion such state judges have asserted the kind of self-assurance which Holmes exemplified in one of his early letters to Sir Frederick Pollack. In 1891, while an Associate Justice of the Supreme Judicial Court of Massachusetts, he wrote:

> I. . .send you by mail, an opinion of mine reported in 146 Mass. 545, which has lately been reversed by the Supreme Court of the U.S., together with [Lucius] Lamar's opinion. It is the only case written by me and almost the only one I've sat in for these 9 years that has gone to the Supreme Court. . . I think it is an interesting case and one which I could have written the other way, but I confess I think the ground adopted by the U.S. Court one which is quite irreconcilable with primary juridical notions. My view (you will see there was a dissent) carried the Supreme Court of Maine which has been tending the other way and the Court of Errors and Appeals in New York. So that in everything but technical authority the weight is on my side.[4]

The circumstances which led to the critical resolution of August, 1958, did not arise from the sort of situation which evoked Holmes' private comment. The state supreme courts have not suddenly developed a whole generation of Holmes' and Cardozos. Similarly, the calibre of the justices of the national Supreme Court has not changed radically since the appointees of Roosevelt, Truman and Eisenhower have controlled that tribunal.[5] Despite some contemporary concern over the propensity of the modern justices to explicitly express doubts in concurring and dissenting opinions which traditionally were often submerged in outwardly unified majority opinions,[6] the manner in which the justices of the Supreme Court perform their duties does not differ significantly from the behavior patterns of other American judges, past or present.

It is quite clear, however, that the action taken by the Conference of State Chief Justices is at variance with the frequently stated notion that the

national courts, and particularly the Supreme Court of the United States, have had greater prestige than the courts of the states. An early and very influential statement of this notion by Chancellor James Kent emphasized differences in the quality of judges which were purportedly produced by differences in the mode of selection and stability of tenure:

> The judiciary of the United States has an advantage over many of the State Courts, in the tenure of office of the Judges, and the liberal and stable provision for their support. The United States are, by these means, fairly entitled to command better talents, and to look for more firmness of purpose, greater independence of action, and brighter displays of learning. The federal administration of justice has a manifest superiority over that of the individual states, in consequence of the uniformity of its decisions, and the universality of its application. Every state court will naturally be disposed to borrow light and aid from the national courts, rather than from the courts of other individual states, which will probably never be so generally respected and understood.[7]

One suspects that in the context of the early 19th century there was a stronger element of wishful thinking in Chancellor Kent's concluding sentence than the positive mode would indicate. Clearly, Kent eschewed comment upon the contemporary public policy considerations which may have "disposed" a state court "to borrow light and aid" from either the courts of another state or those of the nation.

Judgments concerning the quality of decision-making are often inexorably bound up with subjective approval or disapproval of the ideological values and public policy positions of particular judges. For example, Holmes felt that Chief Justice Shaw was a great judge because he had an "appreciation of the requirements of the community. . . . few have lived who were his equals in their understanding of the grounds of public policy to which all laws must be ultimately referred."[8] Similarly, the relative prestige and influence of the state and national courts undoubtedly was in Kent's era and is today determined as much by public policy considerations as by estimates about the quality of judicial personnel. With respect to the barrage of contemporary criticism of the Supreme Court of the United States, it seems clear that public policy considerations have been a primary ingredient. This in itself is not unusual. What is striking, however, is the unique combination of circumstances that has contributed to this crisis. Not only has the Supreme Court of the United States fulfilled a new social role, but the other major political institutions of federalism have also shifted from historic patterns of public policy-making to fundamentally different social roles.

In perspective, the basic changes in the social roles of the state legislatures, the state courts and the Supreme Court of the United States are illustrative of the operation of several factors in American federalism that have been determinative since 1789. Although much emphasis has been placed upon the seemingly endless conflicts between localism and centralism, it is noteworthy that powerful social forces, whether embodied in the ascendant nationalism of the gentry class prior of 1800 or in the impatient drive of the new commercial and industrial power in the 1830's and thereafter, have operated upon the nation and upon the individual states simultaneously. The 19th century shaping of public policy concerning the organization and purpose of the corporation by the state legislatures and the establishment by the federal courts of doctrines designed to protect the interstate expansion of corporate trade and finance

capital were, in a sense, reverse sides of the same coin. Willard Hurst perceptively captured the unifying elements present in state legislative and federal judicial policy in his characterization of both of these tendencies as designed to release private energy in order to utilize and exploit a rich material environment.[9]

It would be a mistake, however, to assume that the political institutions of American federalism have been affected by such broad social tendencies in the same way. To the extent that particular institutions were responsive to the demands of the emerging commercial and industrial forces, these institutions acquired greater prestige and influence. Conversely, those institutions which attempted to thwart such demands were destined to decline in public esteem and importance. The relationship between the thrust and drive of particular social, economic and political forces and the tendency for the political institutions of American federalism to florish or atrophy is especially important in the institutional evolution of the national judicial system, the state judicial systems, and the state legislatures.

The basic area of disagreement which was frequently at the heart of the dramatic nineteenth century constitutional conflicts between the nation and the states concerned the fundamental question of the extent to which public authority may restrain private economic activity in order to protect the public interest. For much of its institutional history until 1937, the Supreme Court of the United States fulfilled a social role which attracted the support of those interests and groups which tended to emphasize private economic freedom against public control or regulation. The Supreme Court's abandonment of that role after 1937 has lost to it much of the influential support of such interests, a transition which serves in large part to explain the characteristics of the contemporary "crisis." An historical examination of the social roles of the federal courts, the state legislatures and the state courts may serve to illustrate this loss of interest group support clearly.

The Historic Setting of the Problem

The courts of the nation, from the very beginning of the federal system in 1789, became identified as institutions which were more reliable as defenders of private property than most of the courts of the states. In part this identification resulted from the fact that the federal courts were the constitutionally ordained appliers of the limitation upon state actions which impaired the obligation of a contract. It is equally true, however, that the justices, particularly during the Marshall era, exhibited unseemly enthusiasm for this task. The framers of the Constitution had, after all, conceived the contract clause as a protection of the sanctity of private contracts. But the judicial protagonists of the doctrine of vested property rights, under the intellectual leadership of Chief Justice John Marshall and Justice Joseph Story, broadened the constitutional definition of the word "contract" to include public grants, corporate charters and state legislative enactments which exempted particular tracts of land from state taxation.[10]

In the period of American history before the Civil War, and, in fact, for some time thereafter, the chief responsibility for the social regulation of property rights, corporate or otherwise, was exercised by the state governments. The state governments vigorously promoted economic development through public works such as canals, the granting of tax exemptions to new industries

and the granting of subsidies.[11] That adequate regulation in the public interest should accompany economic promotion by the state governments was keenly recognized by many state political leaders. Ironically, many of the battles for adequate state regulation and taxation of economic enterprise in the Jacksonian era were won in the state legislatures and the state courts, but were ultimately lost before the Supreme Court of the United States.[12] The chief avenues of escape from state regulation lay in the invocation of the contract clause of the national Constitution or in the establishment of national court jurisdiction as an alternative to the occasionally hostile state court systems. It is important to note that the death of Chief Justice Marshall brought no fundamental change in this relationship.

To some extent the Taney Court contract clause decisions broadened the scope of state economic autonomy, but the effect of such decision-making was at best ambiguous. With respect to the expansion of the jurisdiction of the national courts, the Taney Court laid the groundwork for the rather complete erosion of state regulatory authority which took place after the Civil War. In 1844 the Taney Court ruled that corporations could be included within the meaning of the word "citizen" in diversity of state citizenship cases arising under Article III of the Constitution.[13] This and similar rulings opened the floodgates for corporate litigation before the national courts. In 1840 only 92 cases were pending before the Supreme Court, by 1850 this rose to 253 cases, by 1860 to 310 cases. After the Civil War, the general corporate desire to avoid the state judicial systems was given impetus by congressional approval of legislation broadening the scope of national judicial authority to encompass virtually every claimed federal right. The total number of cases pending before the Supreme Court catapulted from 310 in 1860 to 636 cases in 1870, 1212 cases in 1880, and 1816 cases in 1890.[14]

Justice John Archibald Campbell, in a number of dissenting opinions in the 1850's, presented a classic appraisal of the impact of corporate power and influence upon the social and political fabric of the states. State governments were endangered by corporations whose "revenues and establishments mock at the frugal and stinted conditions of state administration; [whose] pretensions and demands are sovereign, admitting, impatiently interference by state authority!"[15] Ethically, corporation directors were motivated by "a love of power, a preference for corporate interests to moral or political principles or public duties, and an antagonism to individual freedom. . ." The doctrine of the Letson case extending the jurisdiction of national courts to make for greater access by corporations would, stated Campbell, tend to "establish on the soil of every state a caste made up of combinations of men for the most part under the most favorable conditions of society, who will habitually look beyond the institutions and authorities of state, to the central government for the strength and support necessary to maintain them in the enjoyment of their special privileges and exemptions."[16] Campbell's analysis prophetically described the era of the "Robber Barons" and the view of contemporary America etched by C. Wright Mills in The Power Elite.

The Post Civil War Era

The degradation of state political institutions which took place during the post Civil War period, was only one aspect of a change taking place throughout American society. Fundamentally, the ideology of the emerging industrial and professional leadership represented a radical departure from that of the declining gentry class. The leaders of the older mercantile and agrarian gentry class had often disagreed over the question which government(s), that of the nation or those

of states, should perform specific functions. But Federalists, Jeffersonian Republicans and for the most part Jacksonian Democrats viewed public service based on educational attainment and civic virtue as a primary social obligation. This tradition was gradually eroding during the period 1830-1860, and disintegrated after the Civil War. The emerging business and professional elite was more prone to concentration upon private affairs, largely eschewing the older tradition of public service based on civic virtue. Moreover, the spirit and temper of the post Civil War era emphasized private rather than public initiative. If the Civil War was a crisis of federalism which tested the power of the government of the nation to curtail the separatist tendencies of an entire region, the crisis in the period 1888-1936 may be viewed as one in which the power of any government in the United States to regulate and control the economy in the public interest was sternly tested.

The state legislatures continued, on occasion, to try to reassert in meaningful fashion their earlier role as regulators of economic and social affairs. The Populist and Progressive movements sometimes achieved marked regional gains. But local pressures from strong lobbies backed by economically powerful corporations often corrupted entire legislative bodies. Furthermore, social experimentation which was considered antithetical to the ascendant corporate power was often discouraged not only by the private groups operating to control state politics, but by the national courts as well. In this sense national judicial umpiring of federalism seriously weakened the capacity of the states to regulate in the midst of a period when industrialization and urbanization made such regulation imperative.[17] Social forces within the states as well as national judicial restrictions upon the states combined to erode the capacity of the states to regulate effectively in the public interest. Where in the 1830's the state legislatures reflected the vigor and self-confidence of an optimistic agrarian yeomanry buttressed by the artisans in the small cities, the 1930's generally found the state legislatures dominated by grossly overrepresented farmers and small town dwellers whose retention of political power was not matched by economic independence, or buoyant confidence in the future.[18] In the contemporary setting, state social experimentation usually reflects the ascendancy of private over public government. The prototype of the acceptable social experiment is Delaware's approach to the chartering and regulation of corporations rather than Wisconsin's workmen's compensation and unemployment relief legislation. Where in the Age of Jackson, the state legislatures addressed themselves to the promotion of economic development and the serious appraisal of the social as well as economic implications of the new commercial and industrial corporations, today in contemporary America, it is the corporations which address themselves to the problems of state and local governmental reform. Governmental reform is frequently considered a secondary, albeit necessary, adjunct of private regional economic development.[19] In short, the political institutions of the states were, by the 1930's and thereafter, fulfilling public policy roles quite different from those of earlier historic periods.

The declining regulatory vigor of the states in the first three decades of the twentieth century was counterbalanced to some extent by a greater assumption of regulatory responsibility by the national government. During the Presidency of Theodore Roosevelt, two major approaches to the development of national regulatory authority were seriously considered. These efforts at national regulation were largely stimulated by the fact that decisions in behalf of laissez faire by the Supreme Court created a "twilight zone" in American federalism in which corporations were frequently able to operate free from either state or national supervision. Theodore Roosevelt reasserted the doctrine of one of the founding fathers, James Wilson, that the national government could exercise power

necessary to cope with any problem which the states were incapable of handling. Even if direct constitutional authority was lacking, the power to act in such situations was one inherent in national sovereignty. When Roosevelt's Attorney General, Charles Bonaparte, proposed this doctrine in the case of Kansas v. Colorado,[20] the Supreme Court rejected it decisively. Congress, during the same period did, however, achieve partial success in developing the concept of a "federal police power." The national Congress invoked its constitutionally enumerated powers, particularly over interstate and foreign commerce, taxation and postal services, in order to prohibit crime and immorality and to provide some legislation dealing with the health and welfare of underprivileged groups in society. However, until the late 1930's, political circumstances and federal judicial conservatism effectively barred widespread national activity of this sort.

The Contemporary Setting of the Problem

It has often been argued that the future of the political institutions of American federalism is inexorably bound up with the successes and failures of the powerful interest groups which compete for economic advantage and political power. It is quite clear that few contemporary groups are inclined to permanently identify themselves with a particular set of political institutions as was rather evident in the Calhounian association of property rights in slavery and the doctrines of state nullification and secession. In general, each group seeks fulfillment of its objectives through whatever institution may seem best suited for the task. However, in the contemporary setting, it is equally clear that there are a number of private centers of economic power for whom the invocation of states' rights serves as a lever for the avoidance of effective public regulation and social responsibility. Conversely, there are other interest groups which look primarily to the national government to fulfill needs which have long been neglected by the political institutions of the states.

One may identify the direction taken by these competing forces by contrasting the views presented by the NAM and the CIO. In 1952, the National Association of Manufacturers argued from a modern states' rights position which has been represented in Congress by a highly effective conservative Southern Democratic and northern Republican coalition. "Unless the trend toward even bigger government is halted, and until it is reversed, the states and private business alike face the prospect of ultimate, complete domination by the federal government."[21] In the same year a spokesman for the CIO, Frank Fernbach, articulated the urban-labor position in these terms:

> Democracy is being stultified in the 48 states by an inequitable system of representation which, in varying degrees disenfranchises the urban-labor voter. Under the imperfect structures of both our federal and state governments, labor can at least hope for a more equitable representation in Washington than in most of the rural-county dominated capitals of the states. As a consequence, even issues which should be susceptible to intelligent and vigorous action in the states - mine safety and inspection, for example, must be brought by labor to the federal government for action.[22]

He might well have added that of the two chambers of Congress, the House of Representatives has, in modern times, become more susceptible to the forces which dominate the state legislatures than the Senate. Because congressional districts are created by the state legislatures, the national Congressmen have been more conspicuous advocates of anti-regulatory states' rights than the

Senators. The latter, being elected at large in each state, more frequently represent the pro-positive government electorate of the large metropolitan centers.

A revealing demonstration of the effectiveness with which nationally-organized interest groups attempt to utilize the political institutions of American federalism for their special purposes is provided by the contemporary efforts of the leaders of the American Bar Association with respect to the relative influence and prestige of the federal Supreme Court and the supreme courts of the states. The public policy positions of the leaders of the American Bar Association are of significance in three important respects. First, the leadership of the Association has often provided the most articulate statements of the modern states' rights position. Secondly, the American Bar Association has been especially influential in molding public attitudes toward national and state judicial institutions because the recommendations of the ABA's leaders are often treated by the mass media as the dispassionate judgments of personally disinterested experts. Thirdly, the viewpoints and tactics of the leaders of the American Bar Association have especial relevance for the contemporary "crisis" of the Supreme Court of the United States.

In contemporary America, the size and complexity of the bar defies simple categorization, but the American Bar Association is comprised of a group whose programs and ideological predelictions are a matter of public record. The main thrust of the public policy stands of the American Bar Association has been exemplified in its opposition to the Child Labor Amendment, to the Roosevelt Court Reform Bill, to the Wagner-Murray-Dingell (National Health Insurance) Bill, to the Genocide Convention and the Covenant on Human Rights, to the Ewing Health Bill, to the Gore-Holifield Bill (providing for public development of atomic energy for peacetime purposes), and to having an ABA observer with the United States delegation to the United Nations. The programs it supported are equally indicative. Since 1937, the American Bar Association was for the Walter-Logan Bill, the Tidelands Oil Bill, the Mundt-Nixon (Internal Security) Bill, the Reed-Dirksen Amendment (placing a 25% limit on income tax except under certain conditions), the Bricker Amendment, the Jenkins-Keogh (lawyers' tax benefits) Bill, the Wham resolutions (in effect urging [a] Congress to guard against leaving interpretation involving states' rights to the Supreme Court and [b] urging transferral of many functions such as urban renewal to the states), and Congressional legislation designed to override recent Supreme Court decisions involving basic procedural rights.[23] The latest stand of the ABA House of Delegates on internal security is not the first of its kind. In 1952, the House of Delegates approved a resolution commending the House Un-American Activities Committee and the Senate Internal Security Sub-Committee on the manner in which they conducted their hearings and investigations. The House also approved an amendment to this resolution submitted by Charles Rhyne to extend this commendation to the McCarthy Subcommittee for "conducting its inquiry in the exposition [sic] of Communist activities in a dignified lawyerlike way, with full recognition of all the constitutional rights of those they call before them."[24]

Recently Frederick Bernays Weiner deplored the fact that bestowal of the American Bar Association Gold Medal for Conspicuous Service had become a prize for past presidents where in earlier days it was reserved for men of the stature of Holmes, Hughes or Williston.[25] The bestowal of the Medal upon Frank E. Holman in 1953 "for his work in rousing the country to the dangers of international treaties which may infringe upon freedoms guaranteed by the Bill of Rights"[26] would abundantly bear out Weiner's charge.

In the light of its public policy positions since 1937, what has been the role of the American Bar Association with respect to the federal Supreme Court and the highest appellate courts of the states?

The ABA, the federal Supreme Court and States' Rights

Prior to 1939, the American Bar Association was perhaps the most consistant and dedicated supporter of the federal judiciary and especially the Supreme Court of the United States. In the battle over Franklin Roosevelt's Court Reform Bill in 1937, the Association not only marshalled the support of most lawyers against the bill, but played an effective role in influencing congressional and public opinion against it as well. Traditionally, although it cultivated good relations with the state judiciaries, the leadership of the American Bar Association clearly felt that the important economic interests and ideological values were more reliably safeguarded by the federal courts. One facet of the traditional ABA viewpoint was enunciated by William Howard Taft very explicitly in 1922. Addressing the American Bar Association Taft pointed out that,

> Litigants from the eastern part of the country who are expected to invest their capital in the West or South will hardly concede the proposition that their interests as creditors will be as sure of impartial consideration in a Western or a Southern state court as in a federal court . . . . No single element in our governmental system has done so much to secure capital for the legitimate development of enterprise throughout the West and South as the existence of federal courts there, with a jurisdiction to hear diverse citizenship cases.[27]

The identification of the national courts as more reliable bulwarks of anti-regulatory ideas or as more stable defenders of creditors' interests than the highest state appellate courts persisted long after this distinction lost much of its foundation in fact. But, as Taft's speech indicated, the image of the state courts as institutions prone to instability or radical doctrine died hard. In fact Taft's sentiments were quoted approvingly and elaborated upon in 1938 by Judge John J. Parker.[28]

Of course, it had been historically true that, on occasion, some state courts fulfilled social roles similar to that of the national courts from the very outset of American federalism. Further, the researches of Edward Corwin, Wallace Mendelson, Leonard Levy, and Monrad Paulsen indicate that some of the state courts pioneered in the development of judicial doctrines which seriously curtailed the ability of the legislatures to control economic license or upheld violations of non-economic freedom and racial equality.[29] But, of far greater importance, the social role of the state courts had, by the 1930's, changed appreciably in the century since the ascendancy of Jacksonian Democracy. The practice of popular election of judges, which had been adopted in many states before the Civil War, became by custom a popular ratification of the nominees of conservatively-oriented state or local bar associations. Social trends within even the more recently settled trans-Mississippi Western states suggest that by the mid-twentieth century, the judges of the highest state appellate courts are apt to be elderly lawyers whose professional training was more systematic than that of the judges of earlier generations. These modern state judges appear to be slightly less politically oriented than their predecessors. But this is true only in the sense that a few more state judges have eschewed public political activity than in earlier times. Most, however, have been heavily involved in

the kind of private organizational and ideological politics which has been a characteristic function of the national, state and local bar associations.[30] No longer are the state appellate courts apt to be hostile to the interests of corporations and property. Politically, the state supreme courts are often susceptible to the same social forces which have transformed the state legislatures from bulwarks of a self-confident agrarian yeomanry in the 1830's to bulwarks of anti-regulatory reaction in modern times.

The gradual change in the social role of the state supreme courts did not shake the primary reliance by the leaders of the American Bar Association upon the federal Supreme Court until the great changes in constitutional interpretation made by the appointees of President Franklin D. Roosevelt. After 1937, the Supreme Court's traditional role as protector of economic freedom against encroachment by either the nation or the states was virtually abandoned. Conversely, certain basic non-economic freedoms involving speech, press, religion and assembly have been protected against state action through doctrinal broadening of the scope of the due process clause of the 14th Amendment as well as through meaningful application of the equal protection clause to the realities of racial discrimination in education and transportation. A typical statement indicating the extent of the withdrawal of the national Supreme Court from the economic affairs of the states is found in Lee Optical Company v. Williamson.[31]

> The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws regulatory of business and industrial conditions because they may be unwise, improvident, or out of harmony with a particular school of thought . . . 'for protection against abuses by legislatures, the people must resort to the polls, not the courts.'

The reaction of the leaders of the American Bar Association to the doctrinal developments immediately after 1937 was strong. ABA President Frank Hogan, in a major address before the ABA Assembly in 1939, deplored these decision-making tendencies as an abandonment of economic freedoms and states' rights to the national legislative will.[32] An American Bar Association Journal editorial stated, in the same year, that,

> In the face of trends which leave the Tenth Amendment rarely mentioned in constitutional interpretation, the ABA will abundantly justify its existance and will deserve the support of all lawyers and citizens, if through it the organized Bar can make some substantial contribution to the defense and maintenance of the Bill of Rights intact.[33]

The ABA's Committee on Judicial Salaries, which heretofore had favored an increase, coldly suggested that salary increases for federal judges be deferred until the federal budget is balanced. The Committee's resolution was approved by the House of Delegates.[34]

The tone and temper of ABA feelings about the New Deal judges and justices was probably accurately reflected in the tart remarks made before the Committee on Judicial Salaries by delegates A.G.C. Bierer and [Idaho judge] James F. Ailshie. Bierer stated that "it should be more the concern of this Association to worry less about getting adequate compensation for the judges and more about getting adequate judges for the compensation." Judge Ailshie argued that "more than half of the federal judges who have been appointed within the last quarter of a century are getting a better salary today than they ever earned in the practice of the law."[35] In contrast to the increasing disenchantment with the federal

judiciary, was the American Bar Association Journal editorial on the Tompkins decision, "if the genesis of the doctrine [of Swift v. Tyson] was a lack of confidence in the scholarship and ability of the state judges in our pioneer days, the abandonment of the doctrine may well be considered proof of confidence restored."[36]

The continuing prospect of federal Supreme Court doctrinal changes soon brought a fundamental shift in attitude in the American Bar Association. In an address to the Illinois State Bar Association on November 28, 1941, ABA President Walter P. Armstrong virtually spelled out a new litigatory and doctrinal strategy for lawyers and state judges seeking to neutralize or defeat the doctrinal tendencies of the New Deal Court.[37] Couching his suggestions in the form of predictions, Armstrong stated that,

> . . . a great state supreme court, construing the Federal Constitution, in a case where there is no binding precedent, will not merely engage in a guessing contest as to the view that the Supreme Court of the United States will take, but will arrive at its independent conclusion and assert its own views. If this feeling of independence comes to pervade the state courts to as full an extent as I believe it will, we have a right to expect from them great opinions expounding the Federal Constitution -- opinions that will challenge the attention of the nation and materially influence the development of constitutional law.
>
> The effect will by no means stop there. The construction of its own constitution by a state supreme court is, of course, conclusive in the Supreme Court of the United States. None the less, even here, the Supreme Court of the United States has wielded great influence. Many provisions of state constitutions are identical with those of the Constitution of the United States. When such provisions have in the past been construed, state supreme courts have usually followed the construction placed by the Supreme Court of the United States on similar provisions of the Federal Constitution. Many have gone further and -- sometimes contrary to their own inclination -- adopted constructions of their own constitutions which they consider in line with the current tendency of the Supreme Court of the United States, even though that court has not passed on the question. Here, too, in the future we may expect a greater independence on the part of the state supreme courts.
>
> Already cases are arising where rights are asserted under provisions of state constitutions similar to clauses of the Fourteenth Amendment and where counsel are careful not to make any claim under the Federal Constitution.
>
> So it seems to me that the state supreme courts are witnessing the dawn of a new day -- a day in which they shall be the sole custodians of the common law -- a day when they will more daringly expound the constitutions of their respective states and more independently deal with their statutes -- a day when their voices will be more audible in the unending debate over the Federal Constitution.
>
> What the result will be no one can foretell. One thing is certain, there will be on the part of the state courts not only the need for capacity, but for courage and leadership. Present these, there may come a new era in American jurisprudence. Absent these, we may be left,
>
> 'Wandering between two worlds, one dead
> The other powerless to be born.'

Why the State Supreme Courts?

From the A.B.'s standpoint, was the shift in emphasis from the national to the state courts justified? Two factors operated to confirm, in large part, Armstrong's hopes. First, the fundamental changes in the social and political structures of the states described above had, over a period of a century, transformed many of the state supreme courts into strongholds of legal conservatism. Secondly, and in ironic contrast to the frequent claims that the Supreme Court of the United States has steadily encroached upon the rights of the states, much of the post-1937 decision-making of the highest federal tribunal has contributed to the prestige and influence of the state supreme courts by broadening their authority in a number of areas. The state courts were restored their autonomy with respect to common law matters.[38] Furthermore, the withdrawal of the national Supreme Court from its earlier role as supervisor of the economic policies of the states actually did not leave such supervision to the people at the polls as was suggested in the Lee Optical decision. The state courts took this responsibility with alacrity.[39]

Although the highest state appellate courts have, of course, exercised their decision-making power to strike down blatent instances of legislative favoritism,[40] the ideological emphasis in many post-World War II state supreme court decisions involving economic affairs has been upon nineteenth century liberalism. Fundamentally, the attitude of many of the state justices seems typified by the comment of Chief Justice George W. Maxey of the Supreme Court of Pennsylvania in 1944:

> Freedom of enterprise naturally results in economic inequalities but from them no people ever suffered anything remotely comparable to what they have suffered from political oppression when they permitted the government to become meddlesome enough to attempt to make all men economically equal.[41]

Despite the fact that the federal Supreme Court has eschewed the incorporation of particular economic theories as interpretative dogma of the sort vigorously criticized by Justice Holmes in the Lochner case, the practice is widespread among the state supreme courts. For example, after the federal Supreme Court had upheld a Nebraska statute fixing the fees charged by private employment agencies,[42] the Nebraska Supreme Court held the same law unconstitutional as a violation of due process of law. Opponents of the statute had carefully based their new challenge on the state constitution and avoided raising a federal question. The Nebraska Court stated that the statute,

> . . . has the . . . effect of substituting human judgment for the market place, and the judgment of individuals has never proved to be an adequate substitute for supply and demand . . . . The stifling of a legitimate occupational pursuit by price fixing has been condemned as unconstitutional by this court as being beyond the realm of a regulatory statute . . . . We find no reason for receding from this position.[43]

Doctrines such as liberty of contract and business affected with a public interest which had often been invoked by the federal Supreme Court before the 1930's have retained their vitality in many state courts since World War II. The penchant for the substitution of judicial for legislative wisdom concerning the broad public policy implications of state statutes is nowhere more clearly illustrated than in two cases involving the requirement of licensing for persons in service industries. The Supreme Court of North Carolina, in striking down a licensing requirement for dry cleaners, stated that,

> Resort to the police power to exclude persons from an ordinary calling, finding justification only by the existence of a vague public interest, often amounting to no more than a doubtful social convenience, is collectivistic in principle, destructive to the historical values of these guaranties, and contrary to the genius of the people . . . . A departure from these standards may be regarded as social retrogression. No good can come to society from a policy which tends to drive its members from the ranks of the independently employed into the ranks of those industrially dependent, and the economic fallacy of such a policy is too obvious for comment.[44]

In holding void a state law requiring the licensing of photographers in 1946, the highest appellate court of Virginia stated,

> In this day of bureaucracies multiplied we are constrained to emphasize a firm adherence to the philosophy that that state is best governed which is least governed.[45]

It will come as a considerable surprise to those who especially enjoyed the scene in O'Connor's Last Hurrah in which Sheffington outwitted the unscrupulous mortician to discover that the General Court of Massachusetts cannot prohibit crematory corporations from selling memorial monuments. The Supreme Judicial Court of Massachusetts advised the legislators that such a prohibition would deprive such corporations of constitutional rights. The Court added that,

> [It is] fanciful rather than real [to suggest] that a bereaved family seeking a place to bury their dead might possibly be exposed to undesirable importunity in the matter of purchase of a monument or might be discriminated against for refusal to buy . . . .[46]

It is noteworthy that only rarely has a state supreme court held void a statute imposing controls upon labor unions. In virtually every instance of this kind the invalidation turned on invocation of the federal constitution under doctrines such as Thornhill.[47]

The field of public utilities rate-making offers another example of the tendency of some state supreme courts to give continued vitality to doctrines which have been abandoned or considerably modified by the federal Supreme Court. In 1944, in a concurring opinion in Federal Power Commission v. Natural Gas Pipeline Company, Justice Black, supported by Justices Douglas and Murphy, stated,

> We think this an appropriate occasion to lay the ghost of Smyth v. Ames . . . which has haunted utility regulation since 1898.

It was generally felt that the Hope decision of 1944 did just that. In 1957, Justice Robert Larson of the Iowa Supreme Court applied the "fair value" formula of Smyth v. Ames, adopting as the rate base ratio 70% for reproduction costs and 30% for original costs. This ratio placed the full burden of contemporary inflation costs upon the consumer. Justice Larson stated, in answer to implied criticism of the invocation of the doctrine of 1898, that,

> No court should be concerned with whether it is 'modern' but with whether it is right. There are such things as eternal virtues and ultimate truths, particularly in the field of constitutional law.[48]

The tendency of many of the highest appellate courts of the states to apply, in the 1940's and 1950's, laissez faire doctrines which had been repudiated by the federal Supreme Court after 1937 was matched by a correspondingly slighter regard for the non-economic liberties.[49] Some Southern courts have, of course, taken militantly anti-civil libertarian doctrinal positions based upon social theories such as that enunciated by the Virginia Supreme Court of Appeals in the Naim case. The Virginia Court referred to:

> the natural law which forbids [racial] intermarriage and the social amalgamation which leads to a corruption of races is as clearly divine as that which imparted to them different natures. . . .
> The Fourteenth Amendment does not prohibit the state to regulate the marriage relation so that it shall not have a mongrel breed of citizens. . . . Both sacred and secular history teach that nations and races have better advanced in human progress when they cultivated their own distinctive characteristics and culture and developed their own peculiar genius.[50]

While most of the state judges outside the region would not be apt to hold social views typical of the antebellum South, they have often tended to place far less emphasis upon the non-economic freedoms than have the justices of the Supreme Court of the United States. The old Jeffersonian conception of the states as the primary defenders of civil liberties, which was basic to the Virginia and Kentucky Resolutions of the 1790's, is clearly not applicable to the state legislatures and courts in the mid-twentieth century. Some of the most serious infringements of civil liberties in the post World War II period were committed by state legislatures and condoned by state supreme courts in the field of subversion.[51] The administration of criminal justice by the states has often been characterized by formal and customary procedures which were violative of elementary requirements of due process. It has been generally acknowledged that truly meaningful improvement of these procedures has come primarily through intervention by the federal Supreme Court.[52] Some state justices have felt that such intervention was wholesome,[53] but in general the reaction has been critical.[54]

Perhaps the clearest illustration of the ideological penchant of some non-Southern state justices to treat problems of racial discrimination as secondary to economic interests is provided in the priority of social values indicated in Rice v. Sioux City Memorial Park Cemetary.[55] Justice Larson, for a unanimous court, attempted to distinguish the Rice case from Shelley v. Kraemer. After holding that the denial of Mrs. Rice's appeal was not state action upholding a private restrictive covenant, Justice Larson stated:

> It may be desirable to hold that state action can be discerned in any case where the state has tolerated discrimination by inaction. . . . But there is a danger in attempting to remedy by such constitutional expansion. Invocation of the Constitution then might depend upon a balance of two asserted values -- the privilege of the corporation and the right of the plaintiff to equality of treatment. . . it is just and proper that state authorities furnish appropriate means of extending these moral rights. . . rather than to try an extension of the coverage of the Fourteenth Amendment to fields that will abridge other individual rights and violate other constitutional guaranties.[56]

The contemporary doctrinal tendancies in many of the state supreme courts bear a striking resemblance to the decision-making tendancies of the Supreme Court of the United States before 1937. In short, ABA President Armstrong had demonstrated keen understanding of the judicial realities when he suggested greater

reliance upon the state supreme courts.

The Contemporary Efforts of the ABA

In the post World War II era, many of the leaders of the American Bar Association accepted the United Nations Organization as an international necessity, but never really overcame their misgivings about most features of the New Deal or its successor the Fair Deal. Virtually every annual presidential address and a galaxy of American Bar Association Journal editorials reiterated the theme that the domestic economic regulations enacted since 1933 were making the United States a regimented nation by weakening free enterprise and states' rights. When ABA President Joseph Henderson developed this theme in the annual address for 1944 he added, significantly, the comment that "much of the very legislation we have criticized has already been or would very likely be upheld in the courts as constitutional."[57]

As Henderson's comment indicated, a good deal of the bitterness against the Roosevelt legislation overflowed upon the justices of the Supreme Court. Attacks questioning the ability, independence and legal philosophy of the Supreme Court justices appeared frequently in the ABA Journal and were given semi-official approval by favorable editorials. A representative sample in 1944 included articles by Chief Justice George Maxey of the Pennsylvania Supreme Court, Congressman Hatton W. Sumners, Frank W. Grinnell, and George Wharton Pepper.[58] The titles ranged from Sumners' "The American Capacity for Self-Government is Being Destroyed by Bureaucracy" to Grinnell's "The New Guesspotism."

Ben W. Palmer contributed a series of articles assessing the changes in legal philosophy and internal judicial procedures which had taken place since 1937. Not only did Palmer deplore the abandonment of natural law, stare decisis and unity in decision-making, but he also implied that the new judicial tendencies contributed to totalitarianism. As he put it in an article entitled "Hobbes, Holmes and Hitler,"

> If totalitarianism comes to America . . . it will come through dominance in the judiciary of men who have accepted a philosophy of law that has its roots in Hobbes and its fruition in implications from the philosophy of Holmes. . . .[59]

Editorials in the ABA Journal contained frontal attacks on the Supreme Court Justices. In commenting on David Laurence's suggestion, in 1947, that a constitutional amendment be adopted abandoning life tenure for federal judges and justices, the Journal editorialized:

> Experience has shown, we think, that the primary cause of the conditions which Mr. Laurence deplores (ill-considered and uncertain decisions, the remote effect of which are not yet understood) has been the appointment to the bench of men who were not properly experienced and trained for judicial work and also lack the independence, the impartiality and fidelity to the judicial function which are indispensible.[60]

Another editorial critical of the justices stated that a,

> Full study of the reasons why private litigants, in suits involving Government or among themselves, accept settlements which they deem unwarranted

> by the law and the facts, rather than risk the uncertainties of litigation, might show some of the conditions that have led to decrease in the number of cases tried.[61]

The editors of the Journal also reprinted approvingly Senator Alexander Wiley's letter indicating that, as chairman of the Senate Judiciary Committee, he would give "full weight" to the judicial selection recommendations of "recognized and respected legal groups" rather than to "political officials." "The present political character of the members by the federal bench is," stated Wiley, "grossly lopsided on the side of Democratic Leftists. . . ."[62] From 1947 to the present the American Bar Association has formally sought to substitute Association approval for the traditional mode of federal judicial selection.

The efforts at "improving" the quality of federal judges and justices were balanced by deliberate organizational efforts to enhance the prestige of the state supreme courts. Strong ABA Journal editorial support was expressed for the suggestions of Senator Pat McCarren and Associate Justice Julian P. Alexander of the Supreme Court of Mississippi that the time had come to start restoring to the states the power eroded during the 1930's and early 1940's.[63] The American Bar Association Journal inaugurated a series of articles describing individual state judicial systems and eulogizing the judicial contributions of the chief justice of each. In commenting upon this series the editor of the Journal wrote pointedly that "several states have a number of judges which is comparable with the entire federal judiciary system."[64] However, the most important step taken by the American Bar Association was the establishment in 1949 of the Conference of State Chief Justices. The Journal account of the first meeting of this organization is very instructive:

> . . . . the section on Judicial Administration of the American Bar Association . . . recently proposed the formation of this formal Conference of Chief Justices. This suggestion was promptly approved by the Association's House of Delegates at its sessions in February, 1948, which authorized the Section on Judicial Administration to undertake the organization of this conference. . . .
>
> Bearing in mind that each of these forty-eight Chief Justices is the titular leader of the entire judicial system in his own state, each system consisting of literally hundreds of courts, the aggregate power represented by this conference can well be imagined.[65]

Since its inception in 1949, the Conference of State Chief Justices has held its annual meetings in conjunction with the annual meetings of the American Bar Association.

The overall strategy of the American Bar Association with respect to the federal Supreme Court has had several closely related facets. On one hand, the Association has attempted to maintain its traditional reverence for the Court as an institution. In this connection the ABA House of Delegates supported the Butler Amendment in 1954 and opposed the bill introduced by Senator Jenner which would have curtailed the Supreme Court appellate jurisdiction.[66] Secondly, the Association has sometimes subjected individual court members and more often, particular decisions to strong criticism.[67] Thirdly, it has sought to increase its influence in the selection of federal judges and justices.[68] Fourthly, it has fostered the development of organizational centers of power which have often criticized contemporary federal judicial decision-making from essentially the same ideological point of view as the Association itself.[69] Fifthly, it has administered the Annual Ross Essay Contest in a manner which has elicited

winning responses which have generally been ideologically congenial to the viewpoints of the ABA's leadership. The annual topic is usually announced in the form of a pointedly leading question. The topic chosen for 1959, incidently, was "Is There Federal Encroachment on States' Rights Which Should Be Curbed?"[70]

Conclusion

What responsibility does the Warren Court itself bear for this crisis?[71] In the forword to the Report of the Committee on Federal-State Relationships Affected by Judicial Decisions, it was stated that several members of the faculty of the University of Chicago Law School contributed monographs on key aspects of the problem. Perhaps the finest testimony in behalf of the Warren Court may be found in these monographs.[72] One cannot escape the conclusion that if the Conference of Chief Justices had taken these studies seriously, it would not have adopted the resolution criticizing the federal Supreme Court. While it is true that instances of federal judicial encroachment upon state power were documented, as they have been in virtually every historical era, the overall impression emerging in each monograph is one which credits the federal Supreme Court with intense sensitivity to the problems of maintaining state autonomy. As was pointed out, a balanced view of the way the Court has treated such problems must include consideration not only of the cases in which the Court wrote opinions, but also of the multitude of instances where the Supreme Court has refrained from rendering decisions.[73]

It is ironical, indeed, to note that the 1958 Report of the Conference of Chief Justices charged that the Supreme Court of the United States "has tended to adopt the role of policy maker without judicial restraint." Virtually every state supreme court represented in this Conference indulged in the practice of substituting its own views of the desirability of economic legislation for that of the appropriate state legislature.[74] Conversely, much of the expansion of federal authority which was deplored by the Conference resulted from federal judicial deference -- judicial self-restraint -- to the judgment of the national Congress.

It is quite clear that the basis for the severe contemporary criticisms of the Supreme Court of the United States has not been a dispassionate appraisal of the Court's work by allegedly personally-disinterested leaders of the American Bar Association and justices of the state supreme courts. Rather, much of this contemporary criticism reflects deep-seated differences in social and political values. To date it is not certain that the present members of the federal Supreme Court have been persuaded by the criticisms of the American Bar Association and the Conference of State Chief Justices. Neither is it certain that the American Bar Association has succeeded in dominating the federal judicial selection process, despite its proud boast that President Eisenhower has submitted all judicial candidates for ABA approval "since the Dallas meeting" attended by the President in August, 1956.[75] It is clear, however, that the long range implications of possible future successes are serious.

References

1. Report of the Committee on Federal-State Relationships as Affected by Judicial Decisions, Conference of State Chief Justices, August, 1958, p. 16. Throughout this paper I shall use the phrase state supreme courts as synonymous with the highest appellate courts of the states. It is, of course, recognized that in some states the highest appellate court is not called a supreme court.

2. Although his review was published prior to the August, 1958, Conference, Professor Philip B. Kurland undoubtedly would have included the state chief justices among the literate critics; see "The Supreme Court and its Literate Critics," 47 Yale Review, (Summer, 1958), pp. 596-599.

3. Seven of the ten state chief justices who submitted the report were from states outside the South; in the voting on the critical resolution 36 chief justices supported it, 8 opposed it, while 2 abstained and 4 were absent, Report, op. cit., pp. 15-16.

4. Mark De Wolfe Howe (ed.), The Holmes-Pollack Letters, I, (1941) p. 40.

5. Modern selections to the Supreme Court have reflected essentially the same factors which have been important to the selection process since 1789; John R. Schmidhauser, "The Justices of the Supreme Court: A Collective Portrait," 3 Midwest Journal of Political Science (February, 1959), pp. 1-57.

6. See, for example, Karl M. ZoBell, "Division of Opinion in the Supreme Court: A History of Judicial Disintegration," 44 Cornell Law Quarterly (Winter, 1959), pp. 186-214.

7. Chancellor James Kent, 1 Commentaries on American Law, (5th edition, 1844), pp. 443-444.

8. The Common Law (1881), p. 106.

9. James Willard Hurst, Law and the Conditions of Freedom in the Nineteenth Century United States (1956), p. 1-70.

10. In Fletcher v. Peck, 6 Cranch 48 (1810), Dartmouth College v. Woodward, 4 Wheaton 250 (1819), and New Jersey v. Wilson, 7 Cranch 103 (1812), respectively.

11. For an intensive study of the economic experiences of one state see Louis Hartz, Economic Policy and Democratic Thought: Pennsylvania, 1776-1860 (1948).

12. A particularly illuminating example is provided by Piqua Branch of the State Bank of Ohio v. Knoop, 16 Howard 369 (1854); for the full treatment of Ohio's promotional and regulatory efforts see Ernest L. Bogart, Internal Improvements and State Debt in Ohio (1924).

13. Louisville, Cincinnati and Charleston Railroad v. Letson, 2 Howard 478 (1844).

14. Felix Frankfurter and James M. Landis, The Business of the Supreme Court, (1927), pp. 50-65.

15. Dissent in Marshall v. Baltimore and Ohio Railroad, 16 Howard 314 (1853).

16. Dissent in Dodge v. Woolsey, 18 Howard 331, 373 (1855).

17. Illustrative of this tendency were Lochner v. New York and Coppage v. Kansas, 195 U.S. 45 (1905) and 236 U.S. 1 (1915), respectively.

18. In fact, the political power wielded by rural America in modern times has frequently been influenced by non-agricultural groups usually oriented in behalf of corporate industry or organized labor, see especially Wesley McCune, Who's Behind Our Farm Policy? (1956), and Grant McConnell, The Decline of Agrarian Democracy (1953).

19. See, for example, Donald K. David et al, The Little Economies: Problems of U.S. Area Development, which comprises several papers delivered at the May 29, 1958, meeting of the Board of Trustees of the Committee for Economic Development.

20. 206 U.S. 46 (1907).

21. Quoted in William Anderson, The Nation and the States, Rivals or Partners? (1955), p. 6.

22. Frank F. Fernbach, "Labor's Role in Political Affairs," a speech delivered before the Institute of Public Affairs, Charlottesville, Virginia, June 27,1952.

23. All of the public policy stands listed may be found in the annual publication of the proceedings of the House of Delegates in the American Bar Association Journal, 1937 through July, 1959.

24. Proceedings of the House of Delegates, 38 American Bar Association Journal (1952), p. 428.

25. Letter, 44 American Bar Association Journal (1958), pp. 1136-1138.

26. 39 American Bar Association Journal (1953), p. 876.

27. Quoted in John J. Parker, "The Federal Judiciary," 24 American Bar Association Journal (March, 1938), pp. 239-244.

28. "The Federal Judiciary," 24 American Bar Association Journal, (March, 1938), pp. 239-244; and (April, 1938), pp. 319-321.

29. Edward S. Corwin, "The Doctrine of Due Process of Law Before the Civil War," 1 Selected Essays on Constitutional Law (1938), pp. 203-235; Wallace Mendelson, "Missing Link in the Evolution of Due Process," 10 Vanderbilt Law Review (1956) p. 125 ff; Leonard W. Levy, The Law of the Commonwealth and Chief Justice Shaw, (1957), pp. 109-117; and Monrad G. Paulsen, "Natural Rights - A Constitutional Doctrine in Indiana," 25 Indiana Law Journal (1950), pp. 123-147.

30. For an intensive study of the changing social patterns of selection of members of and candidates for the Iowa Supreme Court see, Thomas A. Ewers, A Study of the Backgrounds of the Successful and Unsuccessful Candidates for the Iowa Supreme Court, 1838-1958, (Iowa City, Unpublished M. A. Thesis, 1959); Timothy G. Higgins, "The Justices of the Wisconsin Supreme Court," 1949 Wisconsin Law Review (1949), pp. 738-760.

31. 348 U. S. 483 (1955).

32. Frank Hogan, "Important Shifts in Constitutional Doctrines," 25 American Bar Association Journal (1939), pp. 629-638.

33. Editorial, 25 American Bar Association Journal, (1939), p. 40.

34. Committee Report, 25 American Bar Association Journal (1939), p. 658.

35. Ibid.

36. Editorial, 24 American Bar Association Journal (1938), p. 373.

37. Walter P. Armstrong, "The Increasing Importance of State Supreme Courts," 28 American Bar Association Journal (1942), pp. 2-3; italics mine.

38. Of particular importance was the repudiation of Swift v. Tyson, 16 Peters 1 (1842), by the national Supreme Court; see Erie Railroad v. Tompkins, 304 U.S. 64 (1938).

39. See especially, Monrad G. Paulsen, "The Persistance of Substantive Due Process in the States," 34 Minnesota Law Review (January, 1950), pp. 91-118; also Daniel J. Dykstra, "Legislative Favoritism Before the Courts," 27 Indiana Law Journal (1951), pp. 38-57; and John A. C. Hetherington, "State Economic Regulation and Substantive Due Process," 53 Northwestern University Law Review, (March - April, 1958), pp. 13-32; and (1958), pp. 226-251.

40. Dykstra, op. cit.

41. "The Equilibrium Between Liberty and Government," 30 American Bar Association Journal (1944), p. 66.

42. Olsen v. Nebraska, 313 U.S. 236 (1941).

43. Boomer v. Olsen, 143 Nebraska 579, 585-86, 10 N.W. 2nd 507, 511-12 (1943).

44. State v. Harris, 216 N.C. 746, 763, 6 S.E. 2nd 854 (1940).

45. Moore v. Sutton, 185 Va. 481, 490, 39 S.E. 348, 352 (1946).

46. Opinion of the Justices, 322 Mass. 755, 79 N.E. 2nd 883 (1948); for the materials cited in footnotes 42-46, cf. Paulsen, "Substantive Due Process."

47. Paulsen, "Substantive Due Process," pp. 116-117; in Paulsen's appraisal of the state courts through 1949, no state court had invalidated a state labor statute solely on state due process grounds.

48. Iowa-Illinois Gas and Electric Company v. City of Fort Dodge, 86 N.W. 2nd 28 (Iowa, 1957); Larson's decision was applied approvingly in Minneapolis Street Railway v. Minneapolis, 86 N.W. 2nd 657 (Minnesota, 1957); and Missouri ex rel Missouri Water Company v. Public Service Commission, 308 S. W. 2nd 704 (Missouri, 1957).

49. Fundamental changes in doctrinal attitudes have, of course, occurred. The Supreme Court of Michigan virtually revolutionized its doctrinal approach to workmen's compensation issues in the four year period, 1954-1958, when five Mennen Williams Democrats acquired seats on the court; Glendon Schubert, Quantitative Analysis of Judicial Behavior (Unpublished manuscript), pp.113-127.

50. Naim v. Naim, 87 S. E. 2nd 749, 752, 756 (Virginia, 1955).

51. Monrad G. Paulsen, "State Constitutions, State Courts and First Amendment Freedoms, 4 Vanderbilt Law Review (1951), pp. 620-642; and Walter Gellhorn (ed.), The States and Subversion (1952).

52. Francis A. Allen, "The Supreme Court, Federalism, and State Systems of Criminal Justice," 8 University of Chicago Law School Record [Special Supplement](August, 1958), pp. 3-23.

53. Walter V. Schaefer, Associate Justice of the Illinois Supreme Court, Courts and the Commonplaces of Federalism, (1959), p. 18.

54. Report of the Committee on Federal-State Relationships as affected by Judicial Decisions of the Conference of State Chief Justices, (1958), pp. 10-13. Report of the Special Committee on Habeas Corpus to the Conference of State Chief Justices, 26 State Government, (1953), pp. 242-246, and Louis Pollack, "Proposals to Curtail Federal Habeas Corpus to State Prisoners," 66 Yale Law Journal, (November, 1956), pp. 50-66.

55. 245 Iowa 147, 60 N. W. 2nd 110 (Iowa, 1954).

56. Ibid., pp. 155-156.

57. "Making Secure the Blessings of Liberty," 30 American Bar Association Journal (1944), p. 604.

58. All of the following are in 30 American Bar Association Journal (1944): Maxey, "The Equilibrium Between Liberty and Government," p. 66; Sumners, "The American Capacity of Self-Government is Being Destroyed by Bureaucracy," p. 3; Grinnell, "The New Guesspotism," p. 507; and Pepper, "The Need for Faith in the American System," p. 568.

59. 31 American Bar Association Journal (1945), p. 573; Palmer's articles may be found in the following volumes: 32 (1946), p. 731; 34 (1948), pp.554, 677, 761, 887, 1000, 1092; 35 (1949), pp. 12, 101, 189; for editorials recommending Palmer's articles see volume 35 (1949), pp. 129 and 224.

60. 33 American Bar Association Journal (1947), p. 150.

61. Op. cit., p. 585.

62. Op. cit., p. 110.

63. Editorial, 33 American Bar Association Journal (1947), pp. 4-5; see in same volume, Julian P. Alexander, "States of the Union: Time to Start Restoring Their Powers," p. 3ff., and Senator Pat McCarren, "Restoring Our Federal System," p. 52.

64. 34 American Bar Association Journal (1948), p. 392.

65. 35 American Bar Association Journal (1949), p. 566.

66. House of Delegates Proceedings, 44 American Bar Association Journal (1958), pp. 386-388.

67. In addition to the ABA Journal editorial criticisms indicated above see ABA President Frank E. Holman's criticism of Shelley v. Kraemer, in his annual address entitled "Must America Succumb to Statism?" 35 American Bar Association Journal (1949) p. 801 ff, or ABA President E. Smyth Gombrell's criticism of "the trend toward a political conception of the judicial power," in an address entitled "The American Faith and the Federal Judiciary," 42 American Bar Association Journal (1950), p. 744.

68. See, for example, Edward J. Fox, Jr., "The Selection of Federal Judges: The Work of the Federal Judiciary Committee," 43 American Bar Association Journal (1957), p. 685 ff.

69. For example, in 1953, ABA President William J. Jameson commented upon the very successful meeting of "three groups not directly affiliated with the House of Delegates but closely allied to the Association, i.e., the Conference of Chief Justices, the Conference of Bar Presidents and the American Law Student Association," 39 American Bar Association Journal (1953), p. 859.

70. 45 American Bar Association Journal (1959), p. 150.

71. It is not the purpose of this paper to provide a point by point analysis of the Report of the Conference of Chief Justices. For appraisals challening the accuracy of the charges made by this Report see John D. O'Reilly, Jr., "The Spencer Roanes of 1958," 4 Villanova Law Review (Fall, 1958), pp. 92-116; and William B. Lockhart, "Response to the Conference of State Chief Justices," 107 University of Pennsylvania Law Review (April, 1959), pp. 802-810.

72. These appraisals may be found in 8 University of Chicago Law School Record [Special Supplement] (Autumn, 1958); they consist of the following articles: Francis A. Allen, "The Supreme Court, Federalism, and State Systems of Criminal Justice," p. 3; Roger C. Cramton, "Limitations of State Power to Deal with Issues of Subversion and Loyalty," p. 24; Allison Dunham, "Congress, the States and Commerce," p. 54; Philip B. Kurland, "The Supreme Court, the Due Process Clause, and the In Personam Jurisdiction of State Courts," p. 65; Bernard D. Meltzer, "The Supreme Court, the Congress, and State Jurisdiction Over Labor Relations," p. 95; Allison Dunham, "The Role of the State Supreme Court in the Adjudication of Federal Questions," p. 140; Philip B. Kurland, "The Distribution of Judicial Power Between National and State Courts," p. 145.

73. See especially, Allen, op. cit., p. 18.

74. In the most recent appraisal three-fourths of the state supreme courts so indulged, Heatherington, op. cit.

75. 43 American Bar Association Journal (1957), p. 1050.

J. S. MILL, ON LIBERTY, 1859-1959

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John Stuart Mill remarked in his Autobiography that his essay On Liberty "is likely to survive longer than anything else I have written".[1] It is certainly true that now, a century later, On Liberty is his most celebrated work. His two major works, A System of Logic and Principles of Political Economy- both two volume publications- long ago passed into obscurity, as have many of his brief writings which were mere tracts of the times. His most ambitious political treatise, Considerations on Representative Government, now has little more than historic value, as a systematic Liberal attack upon the principles of democratic reform being advocated in Mill's day by the Tory Democrats and some social reformers. His Utilitarianism likewise now has only historical significance, as a record of Mill's abandonment of the distinctive Benthamite tenets. But the essay On Liberty is still being published in more editions and still attracts attention, as witnessed by our session here today.

In this latter-day appraisal of Mill's On Liberty, I propose to discuss three questions: What was Mill trying to accomplish in the essay? To what extent did he succeed? What is the significance of his effort?

It appears that Mill's famous essay, like other writings which have become classics, is more talked about than read. What is sometimes said about it bears little resemblance to what Mill says in the essay. This is as unnecessary as it is unfortunate because the essay, read in the context of Mill's life and time and his other writings, is not particularly difficult to interpret or understand.

At the outset let us be clear about what Mill was not trying to do in the essay. Mill did not attempt to address himself to the problems of human liberty in its broadest sense. For one, Mill was not championing what we in this country today refer to as civil rights, quaranteed by our constitutions. Mill states explicitly that it was the "collective opinion" of society, not the official acts of government, he regarded as the principal threat to the individual liberty he was anxious to preserve. In his own words, the problem is to protect the individual "against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them.[2] In the closing pages of the essay, as an addendum, Mill does discuss, briefly and in general terms, some questions about "the limits of government interference", remarking that the questions "though closely connected with the subject of this essay, do not, in strictness, belong to it."[3] Even here Mill, quite characteristically, first states the general principle and then the exceptions; in the end of the exceptions have virtually set aside the general principle.

Specifically, Mill is not trying to make a case against government intervention in economic affairs. Indeed, he explicitly condones such intervention on the grounds that trade and industry are of necessity not "self-regarding"; rather they have a social character.

Further, Mill was not propagating the cause of political and civil liberties. He does not discuss the equal right of racial or religious minorities to share in the privileges as well as the obligations of citizenship. Nor does he, for example, advocate an extension of the vote to the working class, who were in England denied it when the essay was written.

But what then was Mill trying to accomplish in the essay? In his words the essay contains a "single truth": "The importance, to man and society, of a large variety in type of character, and of giving full freedom to human nature to expand itself in innumerable and conflicting directions."[4] His fear was that "the inevitable growth of social equality and of the government of public opinion, should impose on mankind an oppressive joke of uniformity in opinion and practice."[5] Accordingly we find Mill focussing his attention on the question of "the nature and limits of the power which can be legitimately exercised by society over the individual"[6] But it is the liberty of the exceptional individual not to conform which interests Mill. The great danger to liberty, in his view, is the "tyranny of the majority". His dissertation is thus on the liberty of elite minorities to defy with immunity the cannons of propriety in opinion and conduct generally accepted by most members of socity.

It is evident from Mill's discussion that he is mainly preoccupied with three forms of this liberty not to conform: the liberty of the individual to reject established religious beliefs and practices, the liberty of the individual to set his own standards of taste and deportment apart from those of "society", and the liberty of the individual to develop his own "moral and intellectual nature." Mill had personal reasons for being particularly interested in the liberty not to conform in these three respects. In the course of his lifetime Mill felt strong pressures to conform to the religious, social, and intellectual norms of others. These pressures he resisted, but in so doing he paid a price.

In Mill's day the established Anglican Church, allied with the Tory Party and the landed aristocracy, exerted a potent influence in British life, in morals and manners, opinion and practices, as well as in religious affairs. The Church of England was a social institution. Like most 19th century British Liberals, Mill was a non-conformist, in fact, a free-thinker in religion. His writings abound with passages denouncing religious conformity and defending religious dissent. Significantly, in discussing liberty of thought and opinion in On Liberty, most of his illustrations he draws from the field of relgion. In the essay Mill is again trying to establish a case for toleration of religious dissent, against religious conformity.

Mill's interest in the liberty of the individual to be free from society's standards of taste and morals is readily apparent. The essay occupied for Mill a special place in his writings because of Harriet Taylor's close association with it. Mill not only fondly dedicated the work to her; he credited her with joint authority.[7] In a sense the essay is a testament to their remarkable relationship.

For twenty years prior to the death of her husband and her marriage to Mill, Mrs. Taylor and Mill were almost constant companions.[8] Their unconventional attachment resulted in the permanent estrangement of Mill from his family and the friends of his youth. After their marriage, Harriet and Mill lived in virtual seclusion. It was in the years prior to Harriet's sudden death that most of the essay was composed. The essay is in part an attempt to justify the individuality of such exceptional persons, in the face of social pressure to conform to the conventional standards of opinion and conduct.

The third area of human experience where Mill was concerned lest the liberty of the individual suffer is that of intellectual and moral development, or, in a broad sense, education-learning to think and act. Mill recounts in the Autobiography his own unusual process of education, under the stern tutelage of his father, who tried

to shape the younger Mill into the perfect Utilitarian, Mill also relates the story of his "mental crisis" in early manhood, and how he gradually recuperated by regaining control over his own life. It was during this period that Mill attemped to emancipate himself from his father's influence. As a result, he permanently alienated himself from the elder Mill, and also abandoned his main teachings.

We find in the essay some revealing passages in this connection: "Owing to the absence of any recognized general principles, liberty is often granted where it should be withheld, as well as withheld where it should be granted." Later in the paragraph Mill continues: "It is in the case of children that misapplied notions of liberty are a real obstacle to the fulfillment by the State of it duties. One would almost think that a man's children were supposed to be literally, and not metaphorically, a part of himself...*** Is it not almost a selfevident axiom that the State should requre and compel the education, up to a certain standard, of every human being who is born its citizen?"[9] In the essay Mill stresses, understandably, the liberty of the individual to devlope full and freely his own character, exempt from the warping influence of others, such stern and possessive parents.

It was these liberties of the individual-the exceptional person-not to conform to common canons of propriety that Mill was most anxious to preserve. He explained his reason for concern about their preservation in British life. Already in American such liberties had been threatened by the widespread acceptance of democratic principles of equality and majority rule, and by the genral democratizating of life and manners. The masses are their own masters. The essay is another effort by Mill to alert his fellow countrymen to the threat of democracy to the status of elite minorities.

Mill reports in his Autobiography[10] that he was much impressed with Alexis de Tocqueville's Democracy in America; he reviewed each volume as it appeared.[11] It was Tocqueville's study more than anything else which precipitated in Mill a fear of popular government and a preoccupation, fully developed in his Considerations on Representative Governments, with ways and means to curb the popular influence in political affairs. In his Thoughts on Parliamentary Reform, completed shortly after On Liberty was published, Mill attacked the secret ballot and advocated plural voting and minority representation. In his most systematic political treatise, Considerations of Represtntative Government, Mill develops an elaborate critique of democratic rule, along with an apolgia for rule by an elite or "merit".[12]

Mill's aim in On Liberty is related but somewhat different. He is trying to justify the privilege of elite minorities to differ from the mass majority.

We may conclude that On Liberty is a striking personal document, revealing the hopes and fears, the prejudices and convictions, the values and beliefs, of this remarkable personality.

II

So much for what Mill was trying to accomplish in On Liberty. To what extent did he succeed?

Mill's famous thesis in the essay is that society has no right to interfere with the individual except where his conduct harms others: "the sole end for which

mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection."[13] The exception is that society does have a right and duty to protect other individuals from the harmful acts of members.

In elaborting this formula, Mill draws a distinction between two sorts of conduct, depending on the effects: "self-regarding" which affects only the individual, and o"other-regarding" which affects other members of ssocity. In so doing Mill recognizes that both the individual and society have certain rights and certain duties. Because society has a right and duty to protect its members it can legitimately exercise authority over individuals. The theoretical problem for Mill is to draw properly the line which separates the individual's legitimate rights from society's legitimate authority.

But where to draw the line in practice? In applying this formula the practical question which must be answered is whether an individual's act does affect harmfully someone else. In no given instance is the answer to this question necessarily self-evident to everyone concerned. If I tried of my residence and burned it down, society would say it had an interest: I committed arson. If I practiced the principle that two wives are better than one, socity would say that I am guilty of bigamy. If I went swimming in the raw at a public beach, I would no doubt be arrested on society's contention of indecent exposure. If I point out to an audience that you are a fraud and cheat, you could sue me for malicious slander and society's agents would likely award you damages. If I maintained menagerie of goats in my apartment, I would probably be cited by society's authorities for creating a public nuisance.

I each instance, I could, in Mill's terms, plausibly argue that my liberty is improperly infringed. Again, in each case, you could, in Mill's terms, plausibly contend that society is properly protecting itself from my anti-social conduct. Who would be correct? Is a question of fact involved? No; -we could stipulate the facts and still disagree. A question of value is involved-my liberty as against society's interests. But who is to choose?

Mill does not, strictly speaking, supply an explicit answer to this question. But he does imply one, and it is indeed an odd answer. Mill was frankly not interested in the liberty of common people. For Mill liberty was not an absolute right but rather a means to the higher end of social progress. The contribution of the collective mediocrity of the masses to society's progress is negligible. The contribution of elite minorities is immense. Hence it is the liberty of the exceptional few, for them to deviate from the norms set by society, that Mill is so anxious to preserve from the tyranny of the vulgar majority. The majority, says Mill, is not competent to judge the opinions or actions of the exceptional few. He implies that the exceptional few are competent to judge themselves. The majority should trust them to judge aright.

But what are the special qualifications of the exceptional few which entitle them to decide whether their opinion and actions are selfregarding or not? Mill begs the question by assuming that the values of the exceptional individual are superior to those of the common masses. This assumption is, to say the least, something less than self-evident. Al Capone and the late Senator Joseph McCarthy were also "exceptional person."

In practice, then, Mill provides no satisfactory answer to the question of who should draw the line between the indivicual's liberty and society's authority. Without a satisfactory answer his formula for preserving the liberties of the "superior" few not to conform to socially-accepted norms is plainly unworkable. In fact, in the final chapter of the essay Mill has difficulty applying his own formula, as for example, whether prohibiting pandering or the operation of gambling houses infringes individual liberty.[14]

III

Let us turn now to the third question: what is the significance of Mill's effort? Unquestionably, On Liberty has historical significance as a summation of 19th century British middle-class values by a foremost Liberal spokesman. But what significance does the essay have for us today, as a work in political theory?

This answer turns on two considerations: Are the theoretical questions Mill discusses important in our time? Are his answers meaningful?

The principal theoretical question Mill discusses in the proper relation between the liberty of individuals who are in a minority and the authority of the society controlled by a majority. The question of majority rule and minority rights is important, though not as important in the form Mill discusses it as it is in the actual practice of our society. Mill assumes two classes of persons: the superior few, and the common masses. How to protect the liberty of persons, though they be a few intellectual or social snobs, remains today a problem of some importance. That is because in our pluralistic society of societies, diversity of characters, as Mill phrases it, is valued and properly so. But it one accepts the democratic principle of equality, a more important problem is how to preserve the liberty of members of underprivileged or unpopular minorities, very possibly from infringement resulting from anti-social acts by intellectual and social snobs.

I am suggesting that Mill's conception of the problem of majority rule and minority rights, cast in 19th century Liberal terms, is, in the context of a 20th century democratic society, superficial and unrealistic. Consequently Mill's resolution of the problem is not meaningful.

Mill posed the question in the form of individual liberty versus social authority. But his concepts of the "individual" and of "society" are barren abstraction. Assuming a principle of human inequality, Mill equated the "individual" with a superior few and "society" with the inferior many. In practice the conflict is not between a ruling majority "class" and a threatened minority "class" of persons. We have many majorities and many minorities in our society, because we have numerous and diverse communities. Each of us is a member of many such communities, more or less voluntary in character. We are members of academic communities, professional associations, political parties, service clubs, fraternal orders, sports organizations, and the like, as well as the more formal political communities.

The conflict between majority rule and majority rule and minority rights is not so much between classes of persons as within the personality of every member of a community which exercises authority. As a member of such a community, we share

some common purpose with the other members. We have, in consequence, certain privileges and obligations of membership. We have, among others, always the obligation to abide by the rules of membership and accept the community's authority to regulate our conduct. If we want to play football, we must comply with the rules of the game and of the team, whether or not we approve of those rules. If we want to practice our teaching profession at a university, we must abide b the rules set forth by university authorities, again whether or not they are to our liking. Similarly, if we want to remain a citizen in good standing, we must abide by the duly enacted laws and regualtions, even though we disapprove of some. At least we must abide by them until we succeed in changing them.

But of course we also have personal, private desires we do not share with other members of any given community to which be belong. Perhaps the political program of our labor union conflicts with the platform of our political party. The ruling of our local school board may conflict with the practices of our church. The policy of our university adm nistration may conflict with the conons of the academic profession, as we understand them. Hence we are continually required to choose between the obligation of accepting a community's authority over us, so we can contunue to share in the privileges of membership, of forsaking the community to satisfy our personal desires. The question we must answer, again and again, is whether our shared values and membership in a community are more important to us than our private values apart from that community.

Thus we are, in a democratic society such as ours, time and again faced with a choice between going along with a majority decision we voted against, or going it along. Often this is not an easy choice to make. We are pulled in opposite directions by conflicting desires. However, as a practical matter, we must make a choice. How we can establish relations between the right of a majority to rule and the right of a minority to differ, so that the making of the choice can be facilitated, is an important and meaningful problem. Yet no assistance or guidance in resolving this problem is offered by Mill's essay On Liberty.

In conclusion let me sum up my thesis in this paper: In the essay On Liberty Mill is attempting to justify the liberty of an elite minority to refuse to conform to certain canons of propriety in opinion and conduct endorsed by a majority of British society in his day. His theoretical formula for accomplishing this, by drawing a line separating "individual" from "social" acts, is in practice unworkable. I conclude that though Mill's effort may have served the cause of 19th century British middle-class Liberals in their effort to stem the tide of democratic reform, his answer to the question of the proper relati n between majority rule and minority rule and minority rights is not meaningful in our present-day democratic society.

1 John Stuart Mill, Autobiography, with an introduction by Currin V. Shields (New York: Liberal Press, 1959), 162.

2 John Stuart Mill, On Liberty, edited with an introduction by Currin V. Shields (New York: Liberal Arts Press, 1956), p. 7.

3 Ibid., p. 133.

4 Autobiography, p. 162.

5 Idem.

6 On Liberty, p. 3.

7 See the Autobiography, p. 162.

8 See the recent biography by Michael St. John Packe, The Life of John Stuart Mill (London: Secker & Warburg, 1954).

9 On Liberty, pp. 127-8.

10 Pp. 123-4.

11 Westminster Review XXXI (Oct., 1835) 270-77; Edinburgh Review, LXXII (Oct., 1840) 1-47.

12 See John Stuart Mill, Considerations on Representative Government, edited with an introduction by Currin V. Shields (New York: Liberal Arts Press, 1958)

13 On Liberty, p. 13.

14 On Liberty, pp. 120-2.

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PROBLEMS OF TEACHING COMPARATIVE COMMUNIST POLITICS

by

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In a report published on behalf of the International Political Science Association a few years ago, Professor Robson wrote that "Political science can only flourish in an atmosphere of freedom and toleration..." and lamented the fact that "we appear to be entering an era marked by intolerance of thought and speech", especially in the United States. "The effects of such threats to academic freedom are to be found not only in what men say and think", he wrote, "but in what they refrain from saying for fear of the consequences. Ultimately, they may cease even to want to think, or to be able to think, for fear their thoughts shall be dangerous."[1] Although the worst threats of this kind seem to have been dispelled, it would be naive to assume that the free discussion and free study of controversial issues of political science were entirely safeguarded. Perhaps more insidious than the open totalitarian threat to freedom are the subtle tendencies to conformity of thought, which subject the individual to the constant pressure to conform to public orthodoxies as well as to adapt himself to the views of administration, colleagues and students.

It is not unnatural that this problem should present itself in its most acute form in the teaching of Soviet government and Communism. Not only are we here dealing with a revolutionary society which has called into question the legitimacy of all our accepted truths and our institutions. We are also dealing with our chief antagonist in foreign affairs, about whose system swirl the angry waves of propaganda diplomatic controversy. The danger of ethnocentrism is always present in supposedly objective science social analysis and assumes even sharper forms when the social scientist is required to deal with a system of thought and action regarded by contemporary society as public enemy no. 1. The "cold war" context then becomes the national context writ large, and writ in such large capital letters as to threaten the objectivity on which truth depends.

There are indeed those who openly advocate the study and teaching of Communism as a contribution to the conduct of diplomacy and the cold war. Not many years ago a well-known university president, later to become the president of a greater institution, in his inaugural address urged the necessity of teaching "the facts of communism", "the truth about communism", but in the same breath went on to proclaim that such enlightenment was "not only a defender of our institutions", but also "an aggressive force for the defeat of false ideologies".[2] Whether in such a context the "truth" about communism can really be attained seems doubtful. Whether a university should seek truth for the sake of other purposes and not for its own sake seems equally questionable. Such an approach comes close, it would seem, to a concept of teaching foreign to genuine scholarship, namely the conception of teaching

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[1] W. A. Robson, The University Teaching of Social Sciences - Political Science (Paris, UNESCO, 1954), pp. 113-4.

[2] Dwight D. Eisenhower, The New York Times, October 13, 1948.

as indoctrination. Just as the Smith Act and other such statutes use the word "teach" as more or less equivalent to "advocate" and condemn the person who seeks to "teach and advocate communism", so this viewpoint, conversely, demands of the teacher of Soviet politics and communism that he "teach and advocate" anti-communism.

Such a viewpoint was expounded even more candidly and vigorously by a former colleague of mine in the Russian studies field (a historian, not a political scientist). In the battle for men's minds waged by the Soviet Union in the fields of history, economics, government, sociology and psychology, "The American teacher of social science is, or should be, in the front line. His opponent, the Soviet teacher, has been in action against him for thirty-six years." "The way to shatter the Soviet ideological offensive is to teach Americans what communism is, how it operates and what its goals are." "The social scientists have the data to expose the Soviet claims of superiority for the monstrous lies that they are. Let them do so regularly, habitually, at ever opportunity in their teaching and writing." The teacher does his fighting in the realm of thought..."[3]

Now it is not my assumption that political scientists in this country, in their research and teaching about Communism and Soviet Russia, have followed these behests and become propaganda warriors in the struggle against Communism. On the contrary it seems worthy of note that American scholars have mainstained a high degree of scholarly objectivity in their studies in this field. Nor is it to be assumed that a teacher should avoid value judgments in his teaching about the Soviet Union or to shy away from presenting his own point of view on the merits and demerits of foreign systems inside or outside the classroom. What is being suggested is that all of us should realize the limitations to our own objectivity in the analysis of things Soviet and guard against easy "final" conclusions. Too often in the past has scholarship and teaching become an instrument of government in the support of current policies and contemporary convictions for us to ignore or to minimize the danger that this may happen again with regard to Soviet Communism. Whether we can really be objective in the midst of a world crisis of present dimensions seems doubtful. Our duty is, presumably, to achieve as high degree of objectivity as possible. Such is, and will remain, a major problem of teaching about Soviet government and communism.

This attitude of mind will be promoted by a certain degree of humility concerning our achievements in the study of political science, and in particular of comparative government. For at least fifteen years political scientists in this sector of work have been indulging in self-criticism. In one of the earliest efforts at reappraisal, Karl Loewenstein wrote: "Only rarely is the attempt made really to compare political institutions and functions in the sense that a common denominator for diversified phenomena is found and deviations from the standard pattern are explained."[4]

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3 Dartmouth Alumni Magazine, February, 1954, pp. 28-30.

4 "Report on the Research Panel on Comparative Government", The American Political Review, 38:3(June, 1944), p. 542.

Over and over again since then, the traditional study of comparative politics, with its emphasis on purely descriptive analysis of individual governments, and on the forms and institutions of such governments, and with its parochial concentration on western Europe, the Commonwealth of Nations, and the United States, has been rejected as inadequate.[5] Repeatedly the call has gone forth for a truly comparative approach in the study of politics, based on as wide an array of evidence drawn from all countries and all ages, utilizing the most refined concepts and hypotheses constantly subject to empirical verification, and setting as the goal the development of partial theories and a general theory of comparative politics.[6] It is clear from this material that the recognition of the parochialism of comparative government was a product of the worldwide character of the war and the emergence of many new states and governments in the hitherto neglected areas of Asia and Africa. It is also clear that the appeal for a genuinely scientific search for valid theories of comparative politics reflected the inadequacy of concepts and theories constructed mainly on the basis of Western European experience and the growing belief in the need for more attention to methods of analysis derived from all social sciences.

Arguments along these lines have been repeated so often in the past decade and a half that one can safely conclude that the achievement of these goals is still far off. Out of this soulsearching has come nonetheless the stimulus for genuinely comparative studies of government along two main channels: the comparative study of groups of countries, such as the non-western areas of Asia and Africa, the Middle East, Latin American, European democracies, the British Commonwealth, and bureaucratic societies, and the comparative study of particular institutions, such as parties, and interest groups, on an even broader global front. The difficulties of the comparative approach are being increasingly recognized, and the unlikelihood of the development of a general theory of comparative politics in the foreseeable future admitted.[7] Nevertheless, the new approach opens up prospects for the gradual emergence of a considerable body of knowledge of a genuinely comparative nature concerning the governments and politics of the world.

The study of Soviet Russia on an intensive scale was a direct outgrowth of war and postwar developments and represented a major break with the Western Europe parochialism characteristic of political science between the wars. For the teacher of Soviet government who wishes to adopt the genuinely comparative approach recently advocated, a number of problems immediately present themselves.
a. the theoretical discussions concerning the need for a scientific and truly comparative study of politics do not for the most part touch on the Soviet Union at all. Their major concern, in so far as they are specific at all, is with the new countries of the non-western world of Asia and Africa.

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[5] See in particular the report, "Research in Comparative Politics", by Roy Macridis and Richard Cox, ibid. 47: 3 (September 1953), 641-57.

[6] The two outstanding examples of this reassessment are Roy C. Macridis, The Study of Comparative Government (N.Y. 1955), and our Gunnar Heckscher, The Study of Comparative Government and Politics (London, 1957). Cf. also Sigmund Neumann, "Comparative Politics, A Half-Century Appraisal", Journal of Politics, 19: 3 (August, 1957), pp. 369-90; and Gabriel A. Almond, "Comparative Political Systems", ibid., 18 : 3 (August, 1956), pp. 391-409.

[7] Macridis, op. cit., pp. 4-6, 72; Heckscher, op. cit., p.21

b. the text-books on comparative government continue to follow a country-by-country descriptive approach and pay only lip service to the idea of comparative analysis, sometimes in a foreword or conclusion, at the most through the use of similar concepts and terms by a team of scholars. Where a functional or institutional arrangement of chapters is adopted, this is usually combined with an analysis of separate governments under each of the chapter headings.[8]

c. the discussion of comparative politics applies mainly to problems of research and does not deal with teaching. Presumably, however, although teaching and research have their own separate problems, both share the common problem of the need for a fully comparative method. It would be illogical to continue to teach comparative government along traditional country-by-country lines while encouraging research on a comparative, universal scale. Must teaching wait upon many years of research along the new lines before itself embarking on a similar path? Teaching is the mother of research. Teaching should encourage comparative thinking by students, and must of necessity use comparative materials. From such teaching will come better teaching in a truly comparative manner. There is no need for one to wait upon the other.[9]

There are, however, much more fundamental problems in the application of the comparative method to the Soviet Union. There is, first and foremost, the question as to whether the facts of comparative government are really susceptible to scientific analysis. Every political system is unique, unlike any the world has ever known or ever will know. This is true even of an individual political system within a related group of political systems, such as Canada within the British Commonwealth, where many common features also exist.[10] Still more is it the case of a country such as the Soviet Union. Likenesses there are with other governments, yes, but also unlikenesses. The essence of comparison is surely to note the likenesses and unlikenesses between the things compared. If they were identical, there would be no comparison. "The function of comparative study", writes Macridis, "is to identify uniformities and differences and to explain them".[11]

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8 See for instance Daniel Wit, Comparative Political Institutions, A Study of Modern Democratic and Dictatorial Systems (N.Y., 1953) and J.A. Corry and Henry J. Abraham, Elements of Democratic Government, (3rd edition, N.Y., 1958). In spite of the title the latter text discusses Soviet and Nazi political systems. More truly comparative analysis is to be found in earlier textbooks, but the analysis is based largely on a few selected European governments or is highly speculative in character. See for instance H. J. Laski, Grammar of Politics (3rd edition, London, 1934) ; R.M. MacIver, The Modern State (London, 1926 : Herman and Finer, Theory and Practice of Modern Government (revised edition, N.Y., 1949) ; R.M. MacIver, The Web of Government (New York, 1948). See review article, dealing with recent comparative government writings, Alfred Grosser, " 'Comparative Government' ", Revue francaise de science politique, IX : 1 (March, 1959), pp. 247-60.

9 This view is shared by Heckscher, op. cit., p. 37 and 61 et seq. It is his view that comparative teaching can best be done at an advanced level of study, but that the approach should be introduced to some degree from the beginning.

10 Cf. Alexander Brady, "Nationalism and Democracy in the British Commonwealth: Some General Trends", The American Political Science Review, 47:4 (December, 1953), p. 1029.

11 Macridis, op. cit., p. 1.

Yet most of the discussion of comparative politics stresses the "like" rather than the "unlike".[12] In social and political systems, however, unlikenesses are so important, so deeply rooted in the historical uniqueness of a particular society, and the product of so many, almost countless, variable factors, that the construction of a general theory of politics will be extremely difficult, if not impossible.

It is this fact that leads Gunnar Heckscher to argue that a "configurative" approach is absolutely unavoidable in the study of comparative politics. This means, he says, that "we base our comparisons on a study of the political system as a whole, not only of particular institutions."[13] This seems all the more valid for the study and teaching of Soviet Russia. Such a study requires such a complex analysis of the historical uniqueness of Soviet society, and of its predecessor, Russian society, that an attempt to deal with its institutions comparatively with other systems runs the risk of superficiality and error. The perceptions of the historian and the historically-oriented political scientist seem indispensable for the study of Soviet politics. This is not to say, of course, that the Russian political system has remained unchanged over the centuries, or even within the Soviet period. The elements of continuity and change within the Russian system must be an integral element of the study of Soviet government. It is, however, to say that the totality of the approach to Russia as a distinctive historical society is of the essence of the study of Soviet politics.[14]

A second problem confronting the genuinely comparative approach to politcs is its human impossibility. It is literally beyond human reach. "Unless we know all states and everything about them, no complete theory will ever be possible," comments Heckscher.[15] The discussion of the configurative approach has referred to the degree of complexity involved in a thorough understanding of a single political system such as the Russian. How many of us are, or can be, acquainted in depth with more than one or two, or several political systems? This suggests the necessity of the continuance of much research along traditional lines, namely the systematic description of a single political system or a group of closely related political systems. It also suggest the desirability of teaching along similar lines, i.e. having students study in all its historical depth and social complexity one or

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[12] Thus, for instance, both the reports cited above emphasize uniformities rather than differences. The Macridis and Cox report rejects "uniqueness"; Loewenstein refers to differences as "deviations from the standard pattern"; Edward Freedman is quoted as follows: "We are concerned with the essential likeness of institutions to keep us from seeing the essential likeness." Heckscher, op. cit., p. 68.

[13] Heckscher, op. cit., p. 51. See also pp. 47, 89, 94-95.

[14] Cf. the comment by Ralph J. D. Braibanti on the report on comparative politics, American Political Science Review, 47: 3 (September, 1953), p. 609, where he stresses the necessity of study of "the total fabric of society" in research on Asian government.

Cf. Alfred Grosser, op. cit., p. 258. "Plus on veut vraiment expliquer un système politiqe national, plus on est amené á être synthétique- mais il se peut que la synthèse se prête d' autant moins à la comparison systématique qu' elle est plus cohérente et plus approfondi".

[15] Heckscher, op. cit., p. 33.

a small group of political systems. It argues against the attempt in a single course to deal with a wide variety of individual systems comparatively and for a more profound treatment of a single system such as the Soviet Union. For the student, as well as for the instructor, the latter is much more within the limits of their competence.

Far from decrying the comparative method in the study of Communist government and politics, I wish in this paper to urge it. Nonetheless the difficulities involved in this method must be squarely faced. The discussions of comparative politics too often ignore or gloss over these difficulties by the constant reiteration of the desirability of a general theory of politics, based on an empirical study of all systems and the construction of concepts and hypotheses capable of verification, and offering the possibility of both explanation and prediction. It would seem wise to imbibe deeply of the humble spirit permeating Gunnar Heckscher's study and his conclusion that the attainment of such a general theory in the near future is extremely doubtful and its ultimate attainment also problematical in view of the human character of the material of politics. "We may possibly observe general tendencies, but we cannot expect to find 'laws of political behavior'", he writes.[16] Such a modest temper need not necessarily clear the limits and the difficulties of such an analysis.

Notwithstanding all the above, it is the main thought of this paper that the study of Soviet politics should be carried on in a comparative spirit, and that there should be more emphasis in our analysis on the common, less on the unique. This is a matter of emphasis, be it noted,not a matter of "either--or." Our constant effort in analyzing and explaining the Soviet system should be to bring out the common and the unique in that system. What in the Soviet system is common to all governments? What is uniquely Russian? What in the Soviet system is common to all Russian governments, past and present? What is uniquely Soviet? What is common to all Soviet governments? What is unique to Khrushchev's regime? To quote Heckscher again, "In spite of differences in 'setting', we find certain similarities; in spite of a general 'pattern' we find national variations".[16a]

Although some observers will see more similarities than differences, and others the opposite, this observer would stress the necessity of seeing both, and to give more stress than in the past to the similarities. It may be assumed, I think, that the predominant tendency of the analysis of Soviet politics to date, in teaching and research, has been to emphasize its uniqueness, either as a distinctive product of Russian conditions, or as a special product of Soviet theory and practice. Where comparisons are made between the Soviet and other systems, the categories are rather rudimentary and all-embracing, and emphasize the differences. This is true, for instance, of such traditional categories as parliamentary, presidential and communist; democracies and dictatorships; one-party, two party and multiparty; or as in Macridis, democratic and authoritarian. A somewhat more precise classification is involved by treating the Soviet system as "totalitarian" to be classed with Germany, Italy, etc.[17]

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16 Ibid., p. 21: also p. 78. Cf. Wm. S. Livingston's comment on the article by Sigmund Neumann in Journal of Politics, 19 : 3 (Ausust, 1957), pp. 479-85.

16a Op. cit., p. 78; also p. 89.

17 Carl J. Friedrich and Zbigniew K. Brzezinski, Totalitarian Dictatorship and Autocracy (Cambridge, 1956). Cf. an interesting fourfold classification of government systems in Almond's article cited above, pp. 392-3.

- a classification which again lays stress on the uniqueness of this group of states. Needless to say the Soviet system is different from others, and categories of differentiation among political systems are necessary and fruitful. Nonetheless analysis of this kind, with the accent almost exclusively on the uniqueness and difference of Soviet system, distorts the understanding of the Soviet qua system of government.

This type of analysis is not only theoretically at fault in ignoring the common element and exaggerating the unique aspects of Soviet government. Such a technique, with constant attention paid to the uniqueness and difference of the Soviet system, and of course, its evil character, has the additional disadvantage of reinforcing students' prejudices and leading them to easy conclusions without serious thought. It fits in well with the cold war or propaganda approach to politics. It offers no safeguards against the threats to objectivity represented by culture-bound assumptions, or the use of western or democratic categories for interpreting other societies. A comparative approach, laying greater stress on the common, offers, not only greater theoretical usefulness, but some protection for the requisite objectivity of student and teacher.[18]

It would be impossible in this short discussion to develop in any detail how the comparative method could be applied to the study of Soviet politics. Indeed that would be for an individual instructor in working out his own course and could not be forced into a Procrustean bed. It might however, be suggested that the concepts set forth by Macridis in The Study of Comparative Government (Chapter 5) could very well be used and applied to the Soviet system. Who are the holders of power and how do they secure and maintain their influence? Who makes the decisions? What processes of deliberation are involved? How are decisions endorced? What are the institutions of government? How are the functions of government performed? What is the role of ideology? An illustration might be taken in the use of force and violence in the Soviet system. All governments use force. The Soviet government, and all Russian governments, have used force to a greater extent than democratic governments. The present government used force to a lesser extent than its predecessor. Precisely what is common and what is unique in the use of force in the Soviet political system? A similar analysis might be made of Soviet political elites, of the process of planning, of the secret police, of law, etc. In all these respects elements common to all governments would be found; in some respects differences would be great, in other respects less marked.[19]

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[18] These advantages are noted by Heckscher, op., cit., p. 62, 94, 114: by Richard C. Snyder, in his introduction to Macridis, op. cit., p. vi; and by Macridis, op. cit., p. 20

[19] Snyder, (ibid, p. vii) writes: "It may well be that the almost exclusive attention to the differences between democracy and dictatorship has obscured what could be learned about politics from assuming that some characteristics are equally typical of both systems." Macridis (ibid, p. 41) states: "In fact, the differences between authoritarian and democratic systems with reference to the decision-making process is often a matter of degree." Again (p. 43) "...there is a marked similarity between political systems that have traditionally been considered to be dissimilar- such as, for instance, the deliberative process in Nazi Germany and in England, or in the United States and the Soviet Union."

In passing, a technique might be suggested so as to make possible the introduction of such a comparative method even in a course based primarily on the description of the Soviet system as such. Research papers might be written by students involving the comparative analysis of institutions, such as, say, the British House of Commons, the American House of Representatives, and the Supreme Soviet, or the F.B.I. and the Soviet secret police, or planning in the Soviet Union, India and Great Britain. Another method would involve the application of the thesis of certain books on western society to Soviet society, for instance, Wright Mills' The Power Elite, or David Riesman's The Lonely Crowd. This would help to counteract the peculiar dichotomy often found in western social analysis, involving sharp criticism of western institutions as failing to measure up to the democratic ideal, and even sharper criticism of Soviet institutions in terms of these very western ideals. This is, in reverse to E. H. Carr's critique of western practice in terms of Soviet ideals, a critique which lacked, however, an investigation of the gap between Soviet ideals and practices. (The Soviet Impact on the Western World, N.Y., 1947).

It has often been pointed out that an institutional analysis, although necessary, may not provide adequate concepts for the study of a political process.[20] This is especially true of the Soviet system. A study of the Supreme Soviet, for instance, as a legislative institution may not afford much insight into the legislative process in Soviet politics. It is hardly an important or valuable conclusion, for example, that the Supreme Soviet is not a legislative body.[21] Yet there are laws in the Soviet Union, and many other public norms having binding effect. The real comparison therefore lies between the law-making process, or the processes of enacting binding norms, in the Soviet Union and the corresponding processes of other systems. Similarly, it is not too useful to state that the CPSU is not a party in the western sense.[22] The more important questions are:
1. what are the functions of the CPSU, if different than those of western parties?
2. are the functions of western parties anywhere performed in the Soviet system?
Again, the Soviet system is often said, without too much significance, to be not "really federal."[23] True, if the concept employed is that of western federalism applicable to Australia, Canada, the U.S.A., etc. There is however a problem of devolution of functions in the Soviet system, common to all political systems, and expressing itself in various forms and degrees of local government, home-rule, regional autonomy, etc. The comparison of the Soviet system with other systems, such as, say, the Austro-Hungarian dual system, or the Czechoslovak system of autonomy for Slovakia or Ruthenia between the wars, might be instructive indeed and might suggest that the Soviet system is not as unique as sometimes assumed.

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[20] Heckscher, op. cit., pp. 74-6, 108 et seq. ; Macridis, op. cit., pp. 28, 35, 40-1. Cf. Herbert A. Simon's comment on the Macridis and Cox report, American Political Science Review, September, 1953, pp. 664-5.

[21] Corry and Abraham, op. cit., p. 491.

[22] Samuel H. Beer et al, Patterns of Government (N.Y., 1958), p. 540.

[23] Gwendolen M. Carter, John H. Herz and John C. Ranney, Major Foreign Powers (third edition, N.Y., 1957) p. 674.

The necessity of studying the political process within a broader and deeper context of all relevant social factors, and the consequent need for an inter-disciplinary approach to the study of politics, have been presented so often that little or nothing need to be added on this aspect of the new school of comparative politics.[24] A concensus on this problem seems to have emerged. A good statement of the problem of applying such a pluralistic approach in the study of Soviet politics is also available in the study by John S. Reshetar, Problems of Analzying and Predicting Soviet Behavior (N.Y., 1955). The reading of this booklet by students of Soviet politics should warn them against one-sided approaches and point to the contributions made by the several disciplines of the social sciences and humanities. It goes without saying that the teaching of Soviet politics must draw upon many diverse sources and materials, irrespective of discipline, for a fuller understanding of Soviet politics.

The achievement of a systematic comparative politics will be slow and arduous, and never fully complete. In the meantime a fruitful half measure, both in research and in teaching, is the comparative study of groups of related political systems or areas.[25] It is in this direction that much of the research has been proceeding in the post-Macridis period of comparative politics. Comparative study of such groups as the Latin American lands, the British Commonwealth, the new African state, the Arab or Middle Eastern states, will advance our knowledge of different types of political systems, and will ultimately serve the cause of a more general theory of comparative politics. Certain countries, such as India, Egypt, may serve as useful bridges between different areas.

The Communist states of the world now offer a laboratory of comparative study of immense and hitherto neglected value for the student of comparative politics. Just as the Westminster system has been the prototype for the far-flugn British dominions, so the Kremlin has been the model adopted and adapted in the Communist states of the world. As long as Stalin lived, the communist doctrine of "the ever-increasing approximation (of the people's democracies) to the Soviet model"[26] allowed for little or no differentiation among the Communist countries, except, of course, for dissident Yugoslavia. From the Soviet point of view, differences reflected merely differences in the degree or stage of development of the countries which had embarked on the "road to socialism" later than the Soviet Union. The "regular patterns of development" (zakonomernosti, as the Soviet phrase termed it) were to be observed in all countries that had or would take this same road.[27]

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24 See in particular the article by Almond cited earlier, and Neumann, op. cit., pp. 380-5. Cf. Heckscher, op. cit., pp. 52-60; Macridis, op. cit., pp. 13-4; Robson, op. cit., pp. 53-60.

25 Heckscher, op. cit., pp. 65-6, 88 et seq.

26 This was the formulation of Klement Gottwald, Nova mysl, VII, No. 1, (1953), pp. 5-10.

27 See H. G.Skilling, "People's Democracy in Soviet Theory", Soviet Studies, III: 1 and 2 (July and October, 1951), espec. p. 140.

Only the Yugoslavs had deviated. Whatever the Soviet view, there were, and could not help but be, different political tendencies in the several members of the Soviet bloc.[27a] Communism must of necessity be national, wrote Djilas at a later time. It was wrong, he said, "to ignore and underestimate the significance of the inevitable differences in degree and manner between Communist states."[28] With the death of Stalin, Khrushchev's trip to Canossa, the recognition of the doctrine of the many roads to socialism, and most especially the developments in Poland, the diversity of Communism has become increasingly a fact. Even with the restoration of the doctrine of the fundamental uniformity of the laws of development of socialist countries in 1957, there remains a fascinating body of materials concerning the diversity of Communism. This is of course especially true of Yugoslavia which rejected the Moscow doctrine of uniformity and continues to reject it. It is true also of Poland which has chosen to endorse the doctrine. It is even more true of powerful China, which although at the moment outdoing Moscow in the exposition of uniformity, has the capacity of following its own course if it should choose and has already given some evidence of so doing. Quite apart from future potentialities in China and the whole of the Communist bloc, there is the present fact of sufficient diversity to require careful study.

We now have twelve Communist states. The pattern of Soviet politics may now be compared and contrasted with the more flexible patterns of Polish, Chinese and Yugoslav politics, and with the national nuances of Communism in Czechoslovakia and other more conformist satellites. For instance, recent developments in collective agriculture in China, Poland and Yugoslavia offer interesting comparisons and contrasts. The Soviet pattern of administrative reorganization introduced by Khrushchev bears some likeness to the earlier Yugoslav reforms of local government and industrial management, and has been applied in somewhat different forms in Czechoslovakia and other satellites. The role of the police in Poland, as compared with the Soviet Union and Czechoslovakia, are worthy of study and thought. The efforts of the Poles to give some degree of reality to the Sejm and to elections deserve consideration. The changing nature of Marxist ideology in Poland and Yugoslavia are topics of immense importance for the future of world communism. The role of the intelligentsia in the Soviet Union and other countries requires study. Problems of loyalty and disloyalty can be subjected to comparative analysis in the light of events in Hungary, Poland, Yugoslavia, etc.

Much has been written on these subjects by students of communism, either as studies of individual Communist systems, or as comparative studies of world communism. On the whole, these developments of "national communism" have been treated, and correctly so, as in the main deviations from a common pattern of government. Thus the uniqueness of communism has simply received new emphasis.

[27a] See H. G. Skilling, "The Czechoslovak Constitutional System: The Soviet Impact", Political Science Quarterly, LXVII: 2 (June, 1952), pp. 224-4; "Czechoslovakia: Government in Communist Hands", Journal of Politics, 17: 3 (August, 1955), p. 447

[28] Milovan Djilas, The New Class (N. Y., 1957), p. 174.

The more diverse communism is seen to be, and the increasingly diverse it becomes with future development, the more observable will be features common to all governments. The more then will it contribute to a truly comparative study of politics. Little or no attention has been given by the advocates of comparative politics to the possible contributions that might be made through the study of comparative communist politics.[29] In view of the richness of materials now becoming available on this subject, such a study offers much both for research and teaching about comparative politics.

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[29] Apart from casual comments in the discussions cited earlier, only Heckscher refers to the value of studies of a comparative nature between the Soviet Union and the satellite states of Europe. (op. cit., p. 90)

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
Washington 25, D. C.

CONTROL OF FEDERAL EXPENDITURES

by
Elmer B. Staats
Deputy Director, Bureau of the Budget

Prepared for delivery at the 1959 Annual Meeting of the
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The subject of today's panel is one to which political scientists may well give sustained attention. The expenditure policies and processes of our Federal Government -- indeed the entire budget processes -- have long engaged the attention of economists. In more recent years they have engaged the attention of public administration experts and of the accounting profession. One or more chapters on budgeting and expenditure control appear in the basic texts for all three of these academic disciplines.

The fundamental problems of Federal expenditure control, however, are problems that should engage the attention of political scientists, for they lie in the crucial area of how public policy is determined and enforced. Determination of the Government's role in our political system is not made solely in terms of the passage of laws, the adjudication of disputes, the enforcement of administrative procedures, or the operation of political parties. The Government's role is to a very large extent determined by the level of financial support which is given to particular functions and activities.

Some fundamentals

The school boy in his first class of civics finds it easy to state the fundamental theory of Federal expenditure control somewhat as follows:

> Voting citizens control Federal expenditures. They elect members of Congress and, through the indirect method of the Electoral College, they elect the President. No money can be drawn from the Treasury but in consequence of appropriations made by law. Only Congress can pass this kind of a law, and Congress can do it in the face of Presidential disapproval only by acting on it a second time by a two-thirds vote. Once appropriations have been made, it is the duty of the President to see that the laws are faithfully executed.

This is, of course, a gross oversimplification. At the same time, it of course ignores the main factors that influence spending.

I propose, in this paper, to examine the factors that influence spending, as well as some of the mechanics, beginning with the question "WHOSE control?" I would like to consider control from the viewpoint of the citizen-voter, the standpoint of the Congress, and the position of the President.

For purposes of this discussion, I think we can define control in its ordinary dictionary sense of keeping within limits, restraining, or regulating. While 90% of the concern for expenditure control is directed toward holding down expenditures, I must concede that expenditure control may also lead to an increase in expenditures, so long as the increase is determined upon in a responsible manner and expenditures are subject to prior limitation, restraint, or regulation.

Problems of expenditure control by citizen-voters

The problem of expenditure control begins with the bit of schizophrenia we all have on the matter of Government services and taxes. There is probably no one present today who would not greatly desire some Government services to be increased or improved -- more frequent mail deliveries, cleaner and more commodious national parks, better highways, faster handling of visitors at ports of entry, quicker results in the finding of the causes and cures of diseases. One could go on and on listing the services which some or all of us would like to see improved. At the same time, we would each like to give the Government as little as possible of our income and wealth, and reserve for spending at our own discretion as much as possible of our personal and family resources. This dichotomy in our thinking -- this desire to see the Government spend for particular purposes, and the wish to reduce expenditures in general -- complicates the problem of expenditure control from beginning to end.

The choice placed before the citizen-voter is seldom clean-cut; both major political parties usually promise more Government service in a variety of directions. Both usually promise economy and savings in general. Neither one proposes to throw away the controls over expenditure. While I believe there are basic differences in the philosophy of those at the center of the two parties, the range of views within each party is so great that the issues between the parties, even on Federal expenditures, can rarely be stated clearly, except by referring to the issues between candidates in a particular State or congressional district; and in those States and districts where the choice of the nominee always presages the winner of the election, Federal expenditures are rarely, if ever, an election issue. The forthcoming Presidential election could be an exception, in view of the exposure given to this subject in the last year.

I must, of course, hurry to make an exception for those particular cases where a new dam for the river or a new channel in the harbor becomes a local issue. But even here, I suspect that almost all candidates favor local improvements, and the political controversy might often resolve itself around the question of who thought of it first, or who is most likely to persuade his colleagues in Washington to drop this crumb from the public table into the lap of the folks back home.

Of course, the citizen-voter might likely belong to one or more of the "pressure groups." Chances are that he will be a veteran, or have a veteran in his family, or that he will be a farmer or small businessman laborer, or that he will have a special interest in conservation, or in health or hospitals, or tourism, or in any one of a hundred other groups who are convinced that the Federal Government should seize its opportunities to do more in the fields in which they are interested.

There are many ways in which the voter-citizen can urge more spending. There are far less organized ways in which he can express his desire to hold down taxes.

In any event, with a few rare exceptions, the electorate seems to have little direct influence on the control of Federal expenditures. The machinery of elections does not contribute in this regard, and the party system is too frail to organize and carry out a considered judgment on Federal expenditures. One of the rare exceptions has been this year, when public opinion has evidently mobilized to a point that has affected congressional action and reduced ambitious new spending ideas.

Problems of expenditure control by the Congress

Several excellent studies of Congress over the last decade have pointed out most of the problems which cause so many congressmen to complain that they have lost control of the Federal budget, despite the fact that every dollar of spending is approved in advance by the Congress.

Fiscal affairs are ostensibly split among at least 4 congressional committees -- one in each House on appropriations and one in each House on revenues and debt. The Joint Economic Committee which many people anticipated might provide a common meeting ground on fiscal matters has not played a major role in developing policies which might govern the action of the 4 committees.

The appropriations committees tend to review the budget piecemeal, dividing it up among 11 or 12 subcommittees in each case. Although the full appropriations committees review the action of the subcommittees, the review is often brief and the reports to the Congress clearly reveal the influential role of the particular subcommittee involved. Last January for the second time in recent years, the full appropriations committee of the House invited

the Director of the Bureau of the Budget and the Secretary of the Treasury for a preview of the budget as a whole prior to consideration of the details in the subcommittees. I sincerely hope that this most useful step can be repeated and will presage other steps toward congressional consideration of total expenditures and revenues in some systematic or organized way.

The President in recent months has been calling attention of the Congress to the ways in which some appropriations bypass the appropriations committees, by being reported in substantive legislation under the technical title "authorizations to expend debt receipts" or "contract authorizations." Such devices, often used for such major programs as the field of housing, disperse even more widely any attempts at systematic congressional control of expenditures.

Even more vital to this whole problem is the fact that so many pieces of substantive legislation commit the Government to the making of future appropriations, leaving little or no discretion to the Congress at the time the appropriations are necessary. It is easy to rationalize this course of action perhaps when we think of legislation which establishes the rates for veterans benefits in terms of particular standards of eligibility and monthly benefits figures. However, the Federal expenditure pattern is similarly beyond control through the appropriations process in the case of public assistance, agricultural price supports, maritime subsidies, and a host of other programs.

The problem of comity arrangements between the fiscal committees and the substantive committees of Congress is one on which more thinking and fresh action is needed. No proposal for a legislative budget, no matter how well it provides for coordinating the work of the fiscal committees, can possibly succeed unless it also takes account of the role of the substantive committees of Congress. Effective control over Federal expenditures by the Congress requires effective machinery to control the whole course of legislation, and becomes a question of machinery for legislative leadership.

One footnote might be appropriate with respect to timing. As distinguished from a number of parliamentary governments where appropriations for each year are meant to control expenditures of the same year, with no formal restraints on advance contracting, our system of Government is based upon control over commitments and contracts and other obligations to be incurred. In the case of most programs, including Defense, Atomic Energy Commission and most civilian activities, obligations authorized by the appropriations include many on which expenditures will not occur until contractor performance occurs a year or two later. Unused portions of appropriations are carried forward from one year to the next, primarily to pay for outstanding obligations incurred in the earlier year. The fact that one-third or more of annual spending is made from these carryover balances frustrates annual congressional control, and yet it is in part the price we have to pay for

an advanced technology in which orders for aircraft, ships, missiles, and other items require more than a year to complete and get delivered. The expenditure limitation proposals -- on which I do not intend to dwell today -- have been advanced to provide Congress with a second set of controls over deliveries, while keeping financial control over obligations to be incurred. Up to now, the Congress does not seem disposed to use these controls.

Problems of Expenditure Control by the President

The executive budget, coupled with the coordination of the executive branch's initiative and responses on legislative proposals, remains as relatively the brightest spot in the area of Federal expenditure control. Through these two devices, performed by the Bureau of the Budget on behalf of the President, the Chief Executive can lay before Congress a systematic, coordinated program for Government activities year by year. Although Congress never accepts the President's total program without considerable questioning and modification, I believe that there is greater confidence in the work of the executive budget today than ever before.

However, the President is subject to the same contradictory pressures that come upon the Congress, and his discretion with respect to the budget is indeed grossly limited by statutory commitments already made. Even apart from statutory commitments, the entire planning and programming of Federal activities are such that major changes in direction or level cannot be readily accomplished in a short space of time. Thus, it is unlikely that a Presidential budget--even in a new Administration--could cut Defense expenditure much below $40 billion or raise it to $45 billion in the first year or two, unless there were a radical change in the entire international situation. A similar range, with the maximum about 10% above the minimum, could be safely predicted for any one of a dozen other major programs -- and many have less flexibility than this or none at all.

True, the President can and does propose a few major changes in trend and priorities from time to time, of which space exploration and aid to education are among the most prominent recent examples. True, too, the President seeks ways to terminate programs no longer needed and reduce the levels of those which carry the lowest priorities, and there have been some accomplishments along this line in recent years.

Government expenditures rose a little more than 12% in the fiscal year 1959 which ended last June 30, although the President's original budget had recommended a rise of less than 3%. Part of this increase reflected special temporary programs to combat the recession such as the extension of unemployment compensation and the special purchases of mortgages on low-cost housing. Another part of the increase was due to the automatic response of certain programs to the recession--more applications for public assistance, for

unemployment compensation, and for veterans' benefits. Another uncontrollable program--farm price supports--had record expenditures because crops were bigger than ever before.

This recent experience is instructive for two reasons. First, as already pointed out, it illustrates that there are many programs which are largely uncontrollable under existing laws, their magnitude depending largely upon economic conditions or factors not subject to administrative control. Second, it illustrates that it is difficult to intentionally control or use the budget after the start of a recession as an overall stabilizing device for short-run effects on employment and industrial activity. The coincidental increases for agriculture, defense, and a pay raise were fully as important as the automatic response of certain benefit programs and the new activities undertaken especially to combat the recession. Furthermore, the spending for some public works accelerated to counteract unemployment is occurring to a great extent in the current fiscal year when the recession is over. While the discussion today is not primarily concerned with compensatory fiscal policy, it is worth noting that the lack of flexibility for expenditure control works both ways.

The problem of Presidential discretion after congressional enactment of appropriations deserves mention. Statutes vest in the Director of the Bureau of the Budget the authority to reserve money from being obligated or spent under four circumstances, but none of these contemplates that the reserve authority will be so exercised as to thwart the will of Congress. The President, however, may request agency heads to exercise caution and special care in spending appropriations of which he does not approve.

The President lacks one important device for expenditure control that is possessed by the governors of 41 States. He does not have an item veto. Presidents beginning with Grant have asked for it, but no Congress seems likely to increase the President's power in this regard, even though it retained the usual right to override the veto by a two-thirds vote.

Recent Proposals Affecting Control of Federal Expenditures

A mere recital of the proposals which have been advanced in the last decade to improve expenditure control is impressive as to the interest in and scope of the problem.

1. There are at least four proposals before this Congress which would revive in one way or another the "legislative budget" idea which first saw the light of day in the LaFollette-Monroney Act of 1946. Generally they would seek to create a new legislative budgetary committee composed of the leadership from the present fiscal committees.

2. Congressman Cannon has introduced this year a measure which would have expressed the sense of the House that appropriations be handled in a single omnibus appropriation bill.

3. Senator Byrd and a substantial number of co-sponsors have a bill which would require an omnibus appropriation bill, amend the rules to avoid by-passing the appropriations committees on expenditure authorizations, require the setting of annual congressional limits on expenditures, and make mandatory up-to-date score-keeping on the Federal budget as it reached successive steps of congressional review. In most respects this measure resembles others which the Senator has introduced during the last 12 years, and which have passed the Senate occasionally, only to be ignored in the House.

4. More than 20 members of Congress have introduced measures to grant the President an item veto. Some would amend the Constitution; others would attempt it by amending the statutory definition of a "bill." As in most years none of the measures has been accorded a hearing.

5. In recent years we have heard a great deal in the Congress of the need for "capital budgeting" for major investment-type programs on the grounds that we should differentiate expenditures for income producing or wealth creating projects from those expenditures which will be consumed without significant long range economic impact. It is highly doubtful whether this concept would contribute to sound fiscal policy in which the total impact of Government is considered even if we could reach agreement as to which categories of expenditures properly fall in this category. The Budget Document, however, has for many years included a special analysis which reflects investment-type expenditures, allowing each individual to draw for his own purposes conclusions as to the extent of the total which reflects investment programs.

6. The use of cost-based budget information has been undertaken within the last few years under legislation enacted in 1957. While cost-based budgeting is sometimes linked with expenditure limitations also provided in same law, the use of such data has been urged as a means of reflecting the amount of work to be performed in a given fiscal year aside from the question of whether expenditure limits are fixed.

7. From time to time proposals are made and bills are introduced in the Congress to require the preparation of budgets for four, five, or six years in advance. The Bureau of the Budget has often made projections for several years in advance for internal working purposes only. In the public works area, agencies are required to submit six-year programs. Agencies are presently required to forecast all of their requirements for two years beyond the budget year. In connection with its legislative clearance responsibilities, the Bureau requires five-year estimates of costs or savings due to new legislation. The President at a recent press conference mentioned balancing the budget over a period of several years instead of a one-year period, implying a need for longer range budget planning.

8. Another aspect of this subject is the period for which appropriations should be made. Generally, appropriations for operating expenses and for current and capital programs of a recurring nature are made annually. Appropriations for one-time projects are usually made in the year in which the project is to be started. From time to time proposals are made that the entire budget be shifted to a biennial basis--either involving an appropriation once every two years for the two-year period, or acting once every two years to make two appropriations for a year each. Some suggestions call for a limited portion of the budget to be put on a biennial basis.

A recently completed study by the Committee for Economic Development projecting expenditure estimates for the ten-year period, 1959-1968, has received wide attention as a useful instrument for pointing up the factors which affect the level of Federal expenditures. While expenditure projections would be highly useful for this purpose, I am sure that Congress will be extremely reluctant to appropriate for longer than one year for the more significant programs. Even so, biennial appropriations for agencies which have small budgets would do much to save the time of both the Bureau of the Budget and the appropriations committees.

9. Senator Curtis of Nebraska and several co-sponsors have come up with a proposal which would resemble some of the reorganization plan techniques. If enacted, this measure would enable the President to reduce or strike out appropriation items, subject to reinstatement if either House of Congress by a majority vote acted to do so within 90 days. Since congressional sessions ordinarily do not last as much as 90 days after the appropriation bills reach the President, this would leave such items in limbo until February or March of the succeeding calendar year.

10. This year as in the past the Congress also has before it a group of measures which would require a balanced budget or require debt reduction along the lines of some formula.

There are other ideas which might be mentioned -- that Congress consciously separate its action on the budget from its review of administrative efficiency, that Congress repeal all permanent appropriations or repeal all authorizations for Congress to enact appropriations (the "wipe the slate clean" approach) which in effect would halt all authority for government programs until re-enactment, or that committees of Congress take over the administrative function of apportionments, releasing appropriations for use on a quarterly basis. There are many others.

Conclusions and Recommendations on Federal Expenditure Control

What can be done to improve control over Federal expenditures?

First, congressional organization and procedures for dealing with the budget could be improved. Action on legislation that has a significant effect on expenditures should somehow be fitted into a plan on legislative handling

of the budget so that the total congressional action at a session pays greater respect to fiscal affairs. How this can be achieved I am not certain. One possibility is to strengthen leadership consideration of fiscal matters. Possibly the chairmen of the most important committees need to be brought together to review the relationship between legislative proposals and the total budget. Congress does not even have an adequate "scoreboard" on the effect of its actions on the budget, which would make it easier to fix responsibility. It is nearly a decade and a half since Congress took a good look at its own organization and processes. This might be an appropriate time for it to create a select committee on the organization and procedures of Congress relating to fiscal affairs.

Second, I would like to see a complete review - perhaps by a select committee - of those laws which have established spending requirements and formulas which place portions of the budget beyond the normal controls of the appropriations process. While some items, such as interest on the debt, would undoubtedly remain in the relatively uncontrollable category, numerous other laws should be amended to remove certain expenditures from the uncontrollable list.

Third, the item veto or some adequate substitute ought to be provided. The President should not be required to approve or veto an appropriation bill as a whole, when it is actually made up of dozens of separate items, of which only a few may be objectionable. The item veto is so well established at the State level that it is sometimes difficult to understand the inertia which prevents any progress on this matter at the Federal level.

Fourth, we may need to come to a "full funding" method of appropriating for all public works. For most Government spending, the executive and Congress must count the cost before we launch a project, and it is customary to avoid making a start until appropriations are in hand to do the job. This is basically true of Defense construction, Atomic Energy Commission projects, the construction of Federal housing, public buildings, post offices, and Federal hospitals. The water resources projects of the Corps of Engineers and the Bureau of Reclamation are exceptions to the application of this control mechanism. For those projects a start may be made with an appropriation only sufficient to cover the first year's progress - perhaps only 2 percent of the project cost. Contracts are written, subject to additional money being appropriated later. As a result, Congress has been appropriating for new starts which will require large increases in expenditures within a few years in order to continue construction at an economical rate. Expenditures probably could be better controlled if the cost of a project were appropriated for at the beginning.

Fifth, a complete review of practices with respect to earmarking of receipts is in order. For a long time the Federal Government enjoyed relative freedom from the problems encountered by many States with substantial earmarking of revenues for specific purposes - highways, conservation, education, etc. During the past decade, however, there has been an upsurge of earmarking

laws so that now we have approximately 140 cases, most of them quite minor in magnitude. The major change on earmarking at the Federal level was the creation of the Highway Trust Fund a few years ago. Despite the substantial highway user charges provided for the fund at its inception, receipts are proving insufficient currently to finance the program and new diversions of revenues into the Fund are being urged. We need a fresh examination of the effect of earmarking practices on expenditure control.

Sixth, performance budgeting has not yet been fully accepted. Good expenditure control methods, in my judgment, require that public policy decisions be made in the light of program plans and proposals and, therefore, be based upon budgeting in terms of program and performance.

Finally, and perhaps most important, we must do more to increase public understanding of the Federal financial situation and of the issues involved in expenditure decisions. We have sought to improve the budget document but we recognize that it is still far too burdened with minor details and with material which may be required for review by the Appropriations Committees but may not be of great public interest. We have enjoyed a modest measure of success with the more popular pamphlets, The Budget in Brief and the Midyear Review of the Budget, and we have scheduled a further searching review of the usefulness of the budget document. The budget, although intended as a forward-looking instrument, remains the principal single source of much data on the past year, because Treasury reports do not cover the same classification or form of the budget receipts. We probably still give too little information on the President's budget proposals in relationship to the assets, liabilities, and commitments of the Federal Government. While better public understanding is not in itself a technique for expenditure control, I believe it to be a vital foundation for progress in our budget work.

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Government today - Federal, State and local -- takes 19 percent of our total national income and accounts for 16 percent of the total gross national product. One out of every six members of the total labor force is employed in Government. Government is playing an increasingly important role in the everyday lives of all of our citizens, a role which promises to increase rather than decrease.

Here then is a challenge worthy of special attention of all groups interested in public affairs, particularly those of us who are especially concerned with the machinery of Government. If we are to make adequate progress, we must not only give continuing attention to this matter but there must be periodic overall reviews by groups outside of Government. The Committee for Economic Development for example published in 1955 a highly

significant and useful report on "Control of Federal Expenditures." But we need other studies which will address themselves in detail to the many aspects of this problem. In considering this problem let us keep in mind that we are thinking not only about the total level of expenditures made by Government but about the priorities and emphasis to be given to functions performed at different levels of Government and about those programs which have highest priority in providing needed growth and security for all of our people.

Within the limits of our own small staff we have a specific program designed to study and recommend action on the many proposals which have been advanced. I would hope that the American Political Science Association might, as an organization, address itself to this question and perhaps undertake a major study. But individual research contributions, graduate dissertations, and similar efforts should be encouraged.

CULTURE AND TECHNICAL ASSISTANCE

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Americans are now committed to working abroad in almost every major state and in almost every conceivable field of human activity. The variety of responsibilities in such a multitude of environments has created manifold problems for the U. S. in every field. Having recently returned from a prolonged tour abroad working in a technical assistance program in the public administration field, I would like to address myself to an aspect of this many faceted problem, namely, the problem of culture and technical assistance.

It is a matter of record in countless cases that American personnel working in foreign lands are subject to new frustrations and stresses that frequently result in breakdowns in their efforts and often, though less frequently, to nervous breakdowns or other manifestations of extra-normal conduct. All agencies, public and private, have sought to minimize such breakdowns by more careful personnel selection and by orienting their personnel on what to expect when they undertake to work and live in a foreign environment. Such orientations are extremely useful and manage to calm some of the fears, and thereby avoid some of the frustrations, of new personnel by pointing out measures to be adopted to protect health, procure food, and some of the cultural habits of the peoples of the country to which they will be assigned.

These "Do's and Don't's" are now a usual device employed as part of the preparation of American personnel and are quite useful. Unfortunately, they remain superficial and do not mitigate the worst features of the phenomenon now known as "culture shock" which so frequently rises to hamper, disrupt and often render useless various American operations abroad.

On the basis of my own experience as chief of party of the Indiana/Thammasat contract at Bangkok, I have arrived at the conclusion that intensive studies must be undertaken into the cultural roots of conduct of the various peoples with whom we are sent abroad to work, if we are to evolve a smooth and effective method of assistance to foreign states. Much has been learned about "culture" and its impact on human conduct. The sociologists and anthropologists have devoted much of their effort to plumbing culture for explanation of why peoples act as they do. World War II with its great demands of psychological warfare further stimulated this research. But obviously, a great deal remains to be done if we are to understand the Weltanschauung of the various peoples of the world, as we must to work effectively with them. The methods for such analysis remain relatively unpolished and depend largely upon the sensitivity and insight of the trained

academic observer. No doubt such methods will be improved but meanwhile there is work to be done. The demands of our time will not wait for new methods but will most likely evolve them.

I should like to take Thailand as an example and attempt to structure a "profile" of its culture in order to explain the conduct of its peoples, or more precisely, its officials, in order to demonstrate the wellsprings of their conduct. I should add parenthetically that my three years experience in that land and the year of reflection on my experience, have now brought me to the point where I should have been when I began.

I ask you each to remember that my problem was to assist the Thai government in improving its administrative services and the personnel with whom I worked were public officials. By examining Thai history and social organization through the use of available literature and first hand experience, I have concluded that the conduct of this group was shaped by two major forces, one being their traditional and unique cultural and historical experience and the other their positions as responsible officials in what has come to be known as an economically underdeveloped state. I shall examine the first category first.

Starting with the unique features of Thai society the analysis of the problems created by their total historical and cultural past should begin with the ideological or philosophical climate in which present day solutions must be attempted.

The solution of present day problems in Thailand must be undertaken against the backdrop of two major and apparently divergent historical facts, the first being that Thailand is and has been for some centuries a Hinayana Buddhist society and the second that until 1932 Thailand was governed by an absolute monarchy. Both of these historic phenomena are owed in part to Thailand's connection with Indian philosophy which most influenced them.

In searching for the basic orientation of the Thai bureaucrat in modern times, one must turn to the ancient traditions of Indian thought which condition his responses to the modern challenge and which still provide him with an image of the world and his role in it. The most obvious beginning point of such an investigation is Buddhism.

Buddha himself was a great religious innovator. He made possible the carrying on of life in this world while eschewing it. The major religious thought of the world into which he was born had

made an uneasy compromise between mortal existance and delivery from it. In the main, for our purposes in analyzing the political importance of his doctrine, Buddha pointed out that deliverance from this world and the realization of truth did not require the mortification of the body through self-flagellation. He discovered that the submergence of the mortal self was possible through thought and did not require physical measures. He thus bridged the Brahman doctrine which allowed a man to live part of his life in society but required him to leave it, his family and friends and become a mendicate devoted to the humiliation of the flesh in order to insure deliverance from rebirth.

Buddha also removed the concept of caste from his doctrine and although this had only limited application in the India of his time it made possible the kind of social mobility found in present day Thailand. What Buddha did not do, however, has important bearing on the Thai concept of public office today. He did not build an ethic that required active participation in the affairs of this world. Although the doctrine of all embracing compassion was an important part of his teaching, it was a passive compassion directing believers to love all those who suffered in this world but not directing them to relieve the suffering.

Albert Schweitzer in his book, Indian Thought and its Development, comments on this in the following manner:

> But the Buddha's ethic of compassion is incomplete. It is limited by world and life negation. Nowhere does the Master demand that because all life is suffering man should strive, in so far as is possible, to bring help to every human being and to every living thing. He only commands the avoidance of pitiless actions. It is excluded by the principle of non-activity which derives from world and life negation.
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> And in the Buddha it is not merely the principle of non-activity, but the conception of the nature of suffering and deliverance from suffering which goes together with world and life negation that is opposed to compassionate action. If all suffering has its origin in will-to-live, it can only be ended by the denial of that, that is to say only through an act of knowledge by the living creature concerning itself. It is really purposeless to wish to alleviate its sufferings in detail or from without. The fundamental cause of the suffering continues and immediately works itself out anew. ... Because there is no question of action, ethics in the system of the Buddha can only develop as an ethic of thoughts.

And again:

> It is only what is spiritual in the world that he wants to alter, not earthly conditions.

It is true that he instructed his believers to follow the eightfold path and established as a part of that eightfold path "right action" but what is meant by "right action"? This is answered in a discourse by Sariputta, a favorite disciple of Buddha and is quoted in Schweitzer as follows:

> What now, brethren, is right action? To avoid killing what is alive, to avoid taking what is not given, to avoid licentiousness: this, my brethren, is called "right action".

It should be noted then that the Buddhist ethic in fact dictates avoidance but does not require that positive action be taken. When seen against this background even the law of Karma has a somewhat different meaning. Karma is the Buddhist law of cause and effect. Stated simply, it means that good deeds cause good to happen and evil deeds cause evil to happen. Read against the background of the above, it is clear that good deeds mean the abstention from affairs of this world. In the words of Buddha "Those who love nothing in this world are rich in joy and free from pain". Thus, if one commits no positive evil and avoids all pitfalls of the flesh he may be delivered from the cycle of birth and death or at least be reborn in a higher status. In sum, Buddhism is a highly subjective faith. One is not required to take any social action beyond tolerance and/or compassion for his fellow creatures. Their suffering is inevitable. If they are poor, leprous or otherwise in dispair it is the results of Karma, their own evil deeds, which brought them to such a condition. They can be raised from misery only through a subjective reordering of their life, no outsider can help them. Only self-knowledge brings salvation. On the other hand, if one is blessed with high estate and comfort in this world, it is the result of merit in a previous incarnation that made it possible. Such position then is owed to no one else and the only responsibility that the holder of such high office has is to avoid evil actions which might cause him to fall from such high estate in his next incarnation or as might prevent him from eventual delivery from the cycle of birth and death.

Although the modern, Western educated Thai bureaucrat has undergone many influences from ethical cultures other than Buddhism, he tends to remain a Buddhist at heart. This results from many

complicated factors not the least of which is the sheer attractiveness of the faith itself. He may now be engaged in some kind of social welfare work or may be a doctor and is at least a public servant with a knowledge of the concept of public responsibility but basically he feels differently vis-a-vis his job than his Western counterpart. He tends to engage in his welfare mission because it is his living, because the world expects Thailand to take such action, because success in this activity brings him promotion or for any number of reasons but he probably does not feel that the recipients or his aid have a right to it as human beings. This does not result from a disdain of human beings but from his faith in Karma and from the passive concept of compassion which has conditioned his society.

No matter what the modern, Western education of the Thai bureaucrat may be, he cannot escape the pervasive influence of Buddhism. Kenneth Wells wrote of the pervasiveness of this influence in 1939 and most of what he said still applies. In his work, Thai Buddhism, Its Rites and Activities, he stated:

> Buddhism came into this land before the Christian era and has in the intervening time become bound up with the life of the people in almost every conceivable way. A Thai child moves in a Buddhist milieu from birth. His surname is usually of Buddhist or Indian origin. ... A Buddhist amulet or a necklace of metal cylinders containing Pali sutras may be hung about his neck for protection and if he becomes ill some lustral water may be procured to sprinkle upon him. In case of severe illness a chapter of bhikkus may be invited to chant for the recovery of the patient.
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> When the child is six or seven he may go to a school within the temple grounds, and there spend his many leisure hours playing marbles, flying kites or kicking a tekrew ball. Later on he is quite certain to spend a few months or years in the temple as a novice or even a monk. ... While he is in the priesthood the government will allow him exemption from military duty and from the poll tax and will give him a reduction in fare on the Royal State Railways. After leaving the priesthood he, with his fellow citizens, may use the temple as a voting place in elections, attend weekly worship there and take part in the seasonal temple festivals where music, processions, color and lights abound. The monks will enable him to make merit daily by presenting them with food, they will give him moral and religious instruction, invoke the blessing of good fortune upon him on birthdays or at house-warmings, assist at his wedding and above all conduct the necessary funeral rites when death enters his home. From Buddhism

he derives his metaphysics, his conception of the world, heaven, hell, the nature and end of man, his idea of karma or the working of moral law, and his belief in metempsychosis and Nirvana. If he wants a religion---Buddhism is that, a religion with prayers austerities, devotional exercises and communal worship.

This all-pervading influence of Buddhism upon the Thai has molded their language, dominated their art, given direction to their classical literature and determined very largely their customs and ceremonies.

To this impressive list can be added all of the official state ceremonies including such things as the opening of new buildings, swearing in of army recruits, observation of anniversaries of organizations, state historical observances, etc. It should also be added that the wearing of amulets does not stop after childhood. Almost all Thai officials contacted during the three year period I was in Thailand wore some kind of amulet. This included persons of the highest rank down to drivers and janitors. The attitude toward the amulet varies, of course, with the level of education and the personality of each wearer. All credit the amulet with some kind of protection. Some believe its possession will prevent them from being cut when struck with a sharp instrument, or from bleeding if cut. At the more intellectual level they feel the amulet is a talisman for their faith and a reminder of the dependence upon the lord Buddha.

In sum, then, the average Thai bureaucrat and the Western educated elite alike have been exposed to the influences of Hinayana Buddhism in a variety of ways and from the earliest period of their life until their death. What does this influence provide for them in the way of a course of administrative conduct? In this sense, Hinayana Buddhism supplies little in the way of ethical guides for positive administrative action. In fact, it does not concern itself with this world and thus ignores the state. In the way of restraints upon administrative conduct, Buddhism is somewhat more useful for it does specify actions that must be abstained from. But these do not provide a code of action for the Thai administrator but rather reinforce the view that affairs of this world do not matter and lead only to sorrow for those who are interested. In turn, the five moral precepts promise a worse life in the next incarnation for those who defraud, commit adultery, practice deceit, or take intoxicants. The idea of reincarnation does imply another chance, however, and serves to weaken such admonitions.

Thus, it is that the Thai administrator has at hand a highly

sophisticated philosophy which can justify his failure to act in a positive fashion. The knowledge that this world is sorrow, that those suffering are compelled to do so by their previous incarnation, that the only hope of peace of soul is not to improve this world but to escape from it, all of these are powerful reasons for inactivity. When this is coupled with the view that a man is in a position of advantage vis-a-vis other men because he deserves it as a result of his prior life he must find it difficult to develop a sense of responsibility to those whom he serves in theory. This attitude is often observable in Thai administration. Granting that administrators in every culture have a tendency to look for reasons not to act (he who acts not errs not) the Thai administrator has the advantage of Buddhist philosophy to assist him. Thus, the compassion and merit making of Buddhism do not serve as a call to action: "It is the Thai way of expressing ethical convictions in this life and assuring passage into a comfortable future life. Merit-making bears little resemblance to the Christian idea of charity; a Thai gives food to the monks, not to help them, but to gain merit for himself. A man's obligations and responsibilities are to himself, not to others, and the Thai care little for organized works of charity and social service."[1] Such an attitude, imbibed literally from the cradle on, is bound to be a handicap in a society striving to achieve a social and economic revolution within the framework of its own culture.

In addition to the fact Buddhism does not provide a guide for action on the part of the official, it serves also to dissuade the masses from an interest in the affairs of state. Granted, Buddhism alone could not do this. The absence until the present time of shortages of food or clothing and the lack of knowledge of any better life has perhaps played a more important role but Buddhism has served to reinforce the passiveness of the peasants of Thailand. "It has been eminently useful to an autocratic government by instilling in the people a cheerful humility and forbearance that has kept them submissive and loyal to the throne."[2] "The Thai have not learned to look to government or social organizations for service."[3] "His religion has taught him to set little weight on material goods and to believe that the best way to satisfy wants is to reduce desires. Buddhism teaches also that even should this life be one of needs and hardships the virtuous man can still hope for a happier reincarnation. Buddhist attitudes underlie the subsistence mentality of the Thai peasant."[4] Hence, another great source of action, the demands of the people has been in part stultified because of the general tone of world and life negation on the part of Buddhism. This is beginning to change. The revolution of rising expectations which is sweeping

the underdeveloped nations of the world is making itself felt in Thailand. The public is slowly coming awake but Buddhism has contributed to the slowness of the awakening. By doing so, it has given the government time to prepare for its new responsibilities but it has slowed the bureaucrat in his response as well as the peasant in his demand. This is a fundamental problem of Thai political and administrative leadership.

Buddhism has made positive contributions to Thai society. It has fostered benevolence in a government whose absolutism would have otherwise been unrestrained. Through its many ceremonies and its daily, nationwide contact with the people it has engendered a sense of belonging and social cohesion. The Thai's are aware of themselves and of their society and are made so in part by their religion. The church has also lent a sanctity and dignity to the state and has nourished a real respect for it in the minds of the public. It is true they have expected nothing in the way of services from the state and tend to regard it as a source of possible inconvenience but its association with Buddhism through the participation of the king and high officials in Buddhist ceremonies has identified it in the minds of the people with the church and its teachings. Further, the church has played and in fact still plays an important role in the education of the young and comfort of the old. Many schools are found in temple grounds and the monks teach the scriptures to many who but for them, would have died illiterate. Much of the cohesiveness, education, and pride of the Thai nation is owed to the church. There are even evidences of Buddhism adjusting itself to the new demands of the time. It is a highly flexible faith when matters of this world are concerned and can well change to meet the new challenge. At present, however, it remains a liability and one of the many problems confronting the leadership of the country.

American technical assistance to Thailand is undertaken against this backdrop of an essentially Buddhist society. This is one of the major factors causing misunderstanding and confusion for American technicians operating, somewhat blindly, in Thai society.

The American technician is molded by the more positive Christian ethic. His society has answered "yes" to the question as to whether or not he is his brothers' keeper. He brings to his job the sense of positive responsibility and a feeling of limited time to accomplish his mission. His Thai counterpart responds with his passive ethic and with a sense of rejection of this world. It is between these two opposing philosophies that many of the problems, frustrations and conflicts lie.

The very nature of the appointment of Americans for overseas service also plays a role in the friction which so often characterize joint operations. In addition to the urgency imparted to the American by his culture and by his understanding of the world situation, he also feels that he must have something to show for his efforts by the end of his tour of duty. The Thai on the other hand, has no philosophic sense of urgency and recognizes that his tour of duty is at least one lifetime and therefore appears to his American counterpart as slothful and often uninterested.

The other historic influence which serves today to create the atmosphere in which the Thai government and its officials strive to meet the new challenges emanating from the West is the concept of the absolute state. To avoid confusion it should be made clear at the outset that the king and the state were synonymous concepts in Thai political tradition. It might be said that although the Thai never developed a concept of an organic state in which all citizens moved and made their contribution they did develop a concept of an organic kingship to whom all subjects owed loyalty and obedience and whose own responsibilities in turn were more obscure. To the Thai of the absolutist period there was no distinction possible between the state and the king. Although such an institution was not unknown in the West the Thai improved upon it in several ways. One was the creation of an officialdom which had no names other than those derived from public office. This helped prevent the development of powerful families with famous names that could offer rallying points for resistance and further served to identify all who served the state as mere creatures of the king. Their income was based upon the amount of land they were allowed by the king (this was determined by their rank). In sum, each member of the official class was of importance only insofar as he represented the authority of the king and there were no institutions outside of the kingship which could offer any rallying point for resistance to his authority. To the subject, officials were organs of the king. The officials themselves owed everything to their king including their income, rank, and name. The kings were not willing to tolerate any social life outside of that carried on in the court as it could be the beginning of resistance to the throne. Even the royal family was organized in such a way as to prevent it forming a possible point of rivalry for the king. Royal rank consisted of five grades with each grade representing the distance of a generation from immediate familial relationship with the king. After passing a princeship along for five generations, each time lower in grade, the royal relatives passed into the nameless obscurity of the ordinary citizen, again preventing the growth of great families.

The general population was divided up into several categories below the rank of nobility. Most belonged to one or another of the public service departments known as Lekh and were numbered and branded by the nobles in charge of the various Lekh. Persons in this category were required either to perform actual service to their Lekh, and this varied by department, or to pay a fixed sum in lieu of service. Their status was hereditary. All others were slaves divided into two categories being either redeemable debt slaves or non-redeemable hereditary slaves. Although Thai slavery seems to have been mild as was the enforcement of corvee duties in the Lekh, still this institution, lasting well into the early 20th century did much to color the attitudes of the citizens toward the state and the officials towards the citizenry. Graham, in his book published in 1924 mentions police problems current in 1892. He states: "The force was very inefficient at that time. Many of the constables were the slaves of the higher officers and were entirely without training even of the most rudimentary description. The sense of extreme respect, not to say servility, which every Siamese evinces towards those whom he recognizes as his 'betters' made these constables chary of interfering with the doings, however nefarious, of persons of good family or connections or having interest in high places..."[5] The interesting aspect of Graham's observation is that although slavery was finally abolished in 1905 the same conditions still tend to obtain in the modern police force. The police do not differ from other units of government however. It is still the case that senior officials tend to use their subordinates as servants or hire their servants as official subordinates. Many times I attended official functions in Thailand given by high officials and found myself being waited on by lower officials from the third class to the first. Much of this attitude still remains in the general relationship between officials and the citizenry.

On almost all of the trips which I and other took outside of the Bangkok region we were able to observe the continuance of the old traditions of the officials being the masters and the people their servants. On several trips with provincial governors I noted that many of the people tended to kneel and prostrate themselves at their feet before addressing them and almost all had a look of embarrassed reticence on their faces when approached or addressed by an official. Perhaps a few anecdotes will serve to illustrate this relationship. On one occasion I was talking to a cabinet level official who was complaining about the inefficiency of the Thai administrators. He illustrated this by telling me of the trouble he had in getting a certain stretch of highway built in the north-central part of the country. He ended by saying that as a result of

his pressure the highway was built when the local district officers ordered all of the people in their respective jurisdictions to work on the road. This was a gross example of the continued use of corvee labor and reflects the old Lekh system. On another instance, I was in the company of a cabinet officer on an up-country trip. This particular minister was well aware of the problems created by the old absolutist traditions and discussed them quite freely. One evening on the trip, he called for a masseur to work on his leg, injured the previous day. As the masseur was a farmer, he began to question him about his ideas toward the government officials in his area. He asked him if he knew the name of his district officer and the old man replied that he knew only his title, i.e., Nai Amphur (Mister District). He was then asked if he ever went to him for help and he was answered, "I only go when I am called to work or if I am in trouble with him. I would never dare bother him otherwise."

With these examples in mind, let us examine the origins of these concepts of the state and kingship. For purposes of analyzing modern attitudes in the bureaucracy the period of Thai history of most interest is the Ayuthia era lasting from about 1350 to the destruction of Ayuthia by the Burmese in 1767.

During the Ayuthia period, the Thai began to borrow the sophisticated forms of the state which they learned of from their wars with the Cambodians. These state forms had come to the Cambodians through the medium of Hindu philosophy and religion and had resulted in the borrowing of the legal and religious institutions which made such philosophy operable in Hindu society. The Thai in turn borrowed their paraphernalia from the Cambodians including much of the state organization and the religious institutions of the Brahmans.

Basically, the result of the borrowing of Hindu concepts of the kingship changed the traditional Thai state from a paternalistic society into an absolutism of the most extreme kind. The king became a Deva-raja, or god-king. He was styled the "lord of lives" and he alone retained the power to define all relationships within the state. If he chose he could, and often did, take the lives of his officials for minor infractions. If he chose to imprison his nobles on mere whimsy, to illustrate his absolute power over them, he could. Even the titles that his officials bore illustrated the dimension of his power as they were known as "slaves of the king". As this relationship of the king to his officials was absolute, so also was the relations of the officials to their subordinates and so on down to the least subject of the land.

In its Indian setting, the Hindu theory of the state was kept in check by the powerful priestly classes of Brahmans, by the caste system and by well entrenched traditions of local autonomy. In the case of Thailand, none of these checks were in operation. Only the fear of revolt of the abused officials and in some slight measure the preachings of Buddha served as limitations on the power of the state and its officials and in the last analysis the personalities of the possessors of such absolute authority formed the limits to the abuse of their power.

This system of absolutism remained in effect in Thailand until 1932. The longest and best remembered governmental traditions of the Thai state stem from this long period of a system in which "the state was greater than society". Despite the coup d'etat of 1932 which overthrew the absolute monarchy, the long period of absolute control continues as the basic orientation of the Thai government and society. Because the system of absolutism could not tolerate any competition of power, all possible centers of resistance were suppressed and/or destroyed. Business, craftmanship, family ties, intellectual activity were all either the monopoly of the king or were not allowed to develop. This is still remarkably characteristic of modern Thai state. Most of modern Thai business is either owned by the Chinese, who operate on the periphery of Thai society, is state owned, or is owned by persons who are actually high officials of the state. The young Thai students in universities in Thailand or abroad still think primarily of government service as the only outlet for their talents and still believe that all power and prestige within their society is located in the bureaucracy.

Again, the American technician finds himself in a situation whose fundamental orientations is different from his own society and oftentimes is critical of Thai conduct because he misunderstands their basic orientation. One of the most commonly voiced criticisms of the officialdom has been their venality and corruption. It is true that monies and government owned properties are often used by the Thai officials for their personal comfort. The Thai's themselves have become critical of such activity but largely as the result of Western prodding. Traditionally, down well into this century, a Thai official was expected to derive his income from his position. His salary was a mere honorarium and for his maintenance he was expected to kin muang or "eat the country". To this day the Thai, both the officialdom and the people, expect a certain amount of "leakage" in their finances as a part of the prerequisites of office.

Another aspect of Thai administrative behavior that stems from their absolutist tradition is the failure of officials to take initiative upward. The long centuries of absolute power by the king has imbedded itself in the administrative behavior pattern of the officials. They will not willingly suggest action to their higher-ups as such suggestions would be regarded as brash. Thus, American technicians working with their counterparts are often frustrated by the refusal of their Thai opposite number to take action and regard such hesitancy as symptomatic of Thai disinterest in self-improvement. Actually, they are merely confronted with an age-old tradition which most of them do not understand.

In addition to the above factors resulting from Thailand's cultural traditions, the problems of leadership in Thailand are vastly complicated by a series of unique factors peculiar to Thailand and resulting from her history and from her economic position. Perhaps the most graphic difference between Thailand and her neighbors in Southeast Asia is the fact that at no time in her 700 year history has Thailand ever been successfully dominated by an outside power long enough to become a colony. It is precisely this absence of any colonial tradition in Thailand that makes it a refreshing place to work for the Western advisor. Here there is no strong feeling against the Westerner as such, and he is apt to be treated as any other individual and objectively judged as to his competence. The fact that Thailand does not share the colonial experience of her neighbors means, however, that her political position vis-a-vis her neighbors' is difficult for her leaders because they do not share the antipathy toward the Western block of such countries as Indonesia, Burma and Cambodia, to name a few. Domestically, this means that Thai leadership does not have a convenient device for generating mass response. To this day, in almost all of the Southeast Asian countries, it is possible for the leadership to secure enthusiastic support for their programs by identifying them in some manner, however far-fetched, with anti-colonialism. President Sukarno of Indonesia and former Prime Minister U Nu of Burma have been able, up to the present, to gather crowds numbering in the tens of thousands to cheer their attacks upon the now-dead colonial past. Such a widespread following in the population is a handy device for leadership and, in addition to mobilizing mass support for programs, is useful in covering up mistakes and for blaming shortcomings upon the willful wickedness of the prior colonial proprietor. Unfortunately for Thailand's leadership, such an appeal would fall upon deaf ears.

Another factor conspiring to complicate the role of Thai leadership is a result of the uniformity of Thailand both ethnically

and culturally. It is true that numbers of non-Thai peoples reside within the borders of Thailand. These peoples include major groups such as the Mon, the Khmer and the Malays, as well as the ubiquitous Chinese. But with the exception of the Chinese, none of the non-Thai groups are numerous enough, or enough disturbed, to encourage any revolution or to fall easy victim of Communists or other subversive movements. As a result, although the countries surrounding Thailand are infested with wide-spread banditry, Communist revolutions and national independence movements, Thailand remains calm, and indeed it is safer to travel from the northernmost to the southernmost borders of Thailand than to walk through the city streets of Chicago.

This domestic calm has been extremely useful in terms of developing communications and in spreading the central authority throughout the land. However, it denies Thai leadership the kind of mass appeal available to such leaders as President Diem of Vietnam and former President Magsaysay of the Philippines. Here again, in these particular countries, speeches pointing out the Red menace would bring out thousands into the street and serve many of the same purposes as attacks upon colonialism, but again, such dramatic issues are absent in Thailand and Thai leadership must depend upon more mundane issues. For example, during the election campaigns of 1956-57, the leadership of Thailand was compelled to speak on issues such as better schools, better roads, more local administrative independence and local economic development. To any citizen of a well-established Western state, these are familiar subjects for campaign oratory, but in the passionate and violent Asian politics, these have a strangely calm and almost unreal sound, and fail to move the largely satisfied population toward any united mass action.

Further, Thailand's religious unity conspires in no small measure not only to remove a possible dramatic issue from the area of Thai politics. The nature of the national religion, Buddhism, teaching as was mentioned above, the transience of this world, does not inspire the populace to assume an active role in public policy or to expect active leadership from their government.

A nother category of uniquely Thai factors contributing to the dilemma of leadership, falls under the general heading of economic factors. First and foremost among these is the fact that Thailand as yet faces no serious problem of over-population. When coupled with the additional fact that until the present, and in the foreseeable future, the production of food in Thailand is adequate, not only to feed the population but to provide the major part of Thailand's exports, another possible unifying issue for the promotion of a

national economic development plan is absent. The government of Thailand has actually been working quite effectively in the development of plans for diversification of their agriculture and for the improvement in the production of present crops such as rice and sugar cane. But again and again they founder upon the shoals of peasant satisfaction with present crops and present production levels. They are told by their peasant farmers that there is no need to work harder to produce more when they have plenty already.

Unquestionably, the absence of major wants and needs on the part of the Thai populace and of major domestic political issues of the dramatic sort listed above, account for the basic stability of Thailand's politics, administration and economy, but operate to the disadvantage of a leadership striving to enlist the mass effort of the population in driving toward a modernized industrial economy.

In addition, the relative calm of Thailand throws public attention, both domestic and foreign, upon other aspects of Thai leadership, often to its disadvantage. For example, the domestic press and the foreign press, often raises the heretofore mentioned question of corruption in Thailand's ruling circles. Even persons knowing relatively little about Thailand can tell you about the opium smuggling and the use of public office for private interest, which is patently present throughout the kingdom. It was this charge, more than any other, that brought down the last government on September 16, 1957, and is even now leveled against that government's successors. There is unquestionably corruption in the Thai government. This is everywhere known and oftentimes admitted by the leadership itself. What is doubtful is that this corruption is in any degree greater than that found in Thailand's neighboring countries. The tremendous emphasis upon corruption results unquestionably from the absence of the more dramatic issues to be found in those countries surrounding Thailand. For example, relatively little appears about corruption in Burma and indeed it would make quiet news, when compared with the enormous problems Burma faces as a result of the incursions of the Red Chinese across her borders, the banditry of former Nationalist Chinese soldiers, the national rebellion of the Kachin and Karens, as well as the revolutionary movement of the Red flag and White flag Communists. In Vietnam, the question of corruption obviously pales into insignificance when compared to the historical fact of that country's division between the Communists in the North and the government of President Diem in the South. Indeed, any criticism on grounds of corruption would sound carping when laid alongside the heroic sacrifices of the people and the leadership of these countries.

An often reiterated charge against Thailand is that it is a military dictatorship. It is also true that Thailand's "democracy" differs from the Western form. There have been cases of violence against persons opposing the State, yet these have been rare rather than common events and are insignificant beside the violence of some of her neighbors. To reiterate, this is a charge often made against Thailand resulting in the fact that many Thai leaders are military men, that there have been some cases of the usurpation of rights on the part of the central government but the relative calm and gentleness of the Thai government makes these instances stand out of all proportion, and the greatest criticism of these excesses is to be found in the Thai press and in public utterances of persons who oppose the government -- scarcely characteristics of a proper dictatorship.

Again a frequently voiced criticism on the part of Western technicians in Thailand, is her apparent vacillation between complete loyalty to the "free world" and a tendency to want to do business with the Communists. Here again, Thailand's unique history must be understood before judgment can be passed. The Thais have been able to survive in modern times because they declined to take an irrevocable position on the side of one or another of the giants struggling for control and domination. Also, there are no strong feelings or fears in the population in general and this allows for more flexibility in terms of international position on the part of Thai leadership. There is, however, a less discernible and equally important factor in this apparent two-mindedness. This is the fact that the Thais feel uncomfortably different from their neutralist neighbors, there is a kind of unconscious irritation on the part of the Thais that they cannot share the strong feelings against the colonial powers with those less fortunate neighbors. In short, Thailand is much like a teetotaler at a cocktail party: convinced but thirsty and left out.

Still another frequently voiced criticism of the Thai government is that it is ineffective. This is perhaps the least justified of all criticisms when viewed in the context of Southeast Asia. Actually, with the exception of the Philippines, Thailand has the only real civil service in all of Southeast Asia. These men are well educated, competent to do their jobs within their tradition. Their long history of dependence solely upon themselves to govern themselves has given them poise and experience far in excess of that of any of their neighbors. Also, as part of the charge of ineffectiveness it is often mentioned that the Thai

government moves slowly on questions of economic development. But, here again, the spur of dire necessity is absent. The Thai people are well fed and although there are signs of increasing strain upon the Thai economy, these have by no means reached the dimensions that they have in other Southeast Asian countries. Thai currency is the most stable in the region and is a free currency. Although wages are somewhat low, they are far better than those of other countries.

In conclusion, my point is briefly this: The main problems of the American technicians result from their failure to understand the nature of the culture in which they operate. I recollect many criticisms among my American acquaintances of Thai conduct which resulted from a lack of understanding of Thai culture. The reactions to this fundamentally different milieu were several. Some found Thai conduct "immoral". This group either grew cynical and withdrew from active roles or became hypercritical, regarding Thai society as beyond help. The cynics oftentimes took up the "worst" vices of their environment or simply served their time with bad grace and left their bewildered counterparts to wonder as to the wisdom of the aid program. The indignant group developed overt hostilities which became the source of constant difficulties in the relations between the Thai and American staffs.

Still another group never seemed to understand at all that they were in a different environment. Regarding the scene as merely shoddy American, they made no effort to change their methods but conducted themselves as though they had never left home. The most sensitive of these developed convictions of personal failure as their time-tested techniques failed to yield expected results. This group tended to consist of members, whose entire experience had been in the United States, and whose cultural arteries had hardened beyond possibility of change.

Finally, the most successful group were those who by instinct or training comprehended that they were operating in a different environment. Reserving their moral judgments for future reflections, they were able to change their methods to fit the new situation. This group, too, suffered from culture shock, but they were able to overcome it and to achieve a not inconsiderable measure of success.

Technical assistance is frought with difficulties of a complexity frightening to contemplate. Taking advice from relative strangers is difficult for anybody, even when the language and the basic cultural orientation of the advisor and the advisee are not dissimilar. But when these parties confront each other as foreigners,

the problems of communication multiply geometrically. It has been suggested that learning the language of the country in which one works in a solution. This can help; but only if the language becomes the medium for comprehending the Weltanschauung of the counterparts to whom one is assigned. The basic difficulty confronting most of our technical assistance is cultural illiteracy.

OUTER SPACE: LAW, POLITICS, ADMINISTRATION

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From the geocentric point of view, a useful one for political analysis, outer space can be taken, at least at this time, to include literally everything beyond a comparatively few miles above the Earth's surface.** One important limiting factor in speculating about these endless realms is found in the scientists current evaluation of man's ability to reach out into the infinite. Since with presently used or planned propulsion systems, it might take tens of thousands of years to reach the nearest star, it is generally believed that man is limited to exploring the solar system for many generations. Thus, we can avoid initially the problem of dealing with intelligent beings from other planetary systems, though, since there are an estimated one to ten billion stars with planetary systems in our galaxy alone, and there are over 200 million galaxies within the range of our largest telescope, the probability of intelligent life elsewhere most assuredly exists.

Man's penetration beyond the lower levels of the Earth's atmosphere has come with startling rapidity. Almost daily, a scientific rocket from any one of many experimenting countries penetrates the ionosphere; military missles which attain distances of 400 to 600 miles above the Earth have been tested by the United States and the Soviet Union and other nations will presumably join the club in the near future. Since October, 1957, a dozen satellites have been placed in orbits ranging up to 26,000 miles from the Earth and two space probes have attained sufficient thrust to break the grip of Earth's gravity. The satellites have already performed significant scientific tasks -- they have made possible inferences and estimates as to the distribution of matter within the Earth, the measurement of atmospheric density, the size and shape of the Earth, the occurrence of micrometeorites, and of ionization, temperatures, and radiations in space. Observations have been stored for transmission triggered by demand from the Earth; the first crude meteorological satellites have been launched and, considering their size and capabilities, have functioned reasonably well; the feasibility of Earth to satellite and satellite to

*A book entitled Controls for Outer Space, co-authored by the present writer and Professor Philip C. Jessup of Columbia University, will be published by the Columbia University Press in October, 1959. Although a large part of the background material for this paper was originally investigated for that work and there is similarity in some of the language used and conclusions derived therein, the author of this paper is solely responsible for the views expressed herein. **For more detailed consideration of the subject matter discussed and of the historical precedents, the reader may consult the book cited; the article by Jessup and Taubenfeld on Outer Space and Antarctica in the issue of International Organization for August, 1959; notes by this writer on U. N. consideration of outer space problems in the American Journal of International Law, April and October, 1959; and, on possible organizational arrangements, Clark and Sohn, World Peace Through World Law (1959).

Earth direct telecommunications has been established. Sputnik II carried a dog into orbit and, though it was not returned safely to Earth, the recent recoveries of missile nose cones containing live animals indicate the probability of engineering a safe return for human space travelers in the not too distant future.

Both for the United States and the Soviet Union, the future sequence of activities and achievements in space will be a function of many variables. Considerations of budgetary policy, military strategy, scientific curiosity and international prestige will all affect the balancing of priorities and costs. It has been estimated that, if sufficient funds are made available, with the adaptation of present equipment, the United States could, in the next few years, put a man into space and recover him alive, investigate the atmosphere of Mars and Venus, establish systems of meteorological, communications and navigation satellites. Within ten years, a man could be sent to the Moon and within twenty years an eight man craft could reach Mars, all this, to repeat, is within the reasonable range of present technological possibilities. More perhaps might be expected from a new "crash" program in these fields. As Dr. W. B. Klemperer has recently commented: "What looks like a great techonological effort today will be easy or even commonplace in 10 or 20 or 50 years, if astronautical developments parallel those we have witnessed in aviation."

Man's ability to penetrate outer space has given rise both to expectations of vast new benefits to all mankind and to increased fears for the security of all nations. The glowing possibilities include not only the promise of a tremendous increase in scientific knowledge about the nature of the universe, including a more accurate understanding of the possibilities of life elsewhere, and about the Earth itself, but also the expectation of great gains in many applied fields as well. For example, in addition to providing information as to the basic nature of weather and how it is "made", which itself might eventually be used to modify nature, not without substantial international political, economic and cultural effects on Earth, a system of meteorological satellites could also provide reports on conditions over the vast areas of ocean, polar regions and underdeveloped land masses, the 90% of the globe in fact, from which little or no adequate information is currently available. It has been suggested that the more accurate forecasts thereby made more generally possible may be worth several billion dollars a year to the United States alone in farming, water resource conservation and prevention of loss of life or property. In another field, navigation satellites could provide more accurate "fixes" for ships and aircraft in all weather conditions than is now possible. A system of communications satellites could provide instantaneous world-wide coverage and, it has recently been said, might even reduce the cost of a phone call halfway round the world to twenty or twenty-five cents, thus making a shrinking world dramatically smaller. Here again fascinating economic, cultural and political implications from space developments present themselves for speculation. Eventually, rapid transit between Earth destinations may also be available for mail, cargo and passengers through use of rockets. If sufficient low-cost service becomes feasible, a communications and transport revolution of more profound psychological, political and economic reverberations than the railway-steamship revolution of the nineteenth century may be in the offing.*

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*It is not fantastic to speculate that the present nation-state system, already regrouping into larger units under the various pressures of productive and destructive new technologies, may well be on its way to technological obsolescence. We shall have to confine our speculations here to more imminent space possibilities, problems and ways of dealing with them within the current international setting, rather than to long-range, fascinating, though not fully foreseeable implications.

In addition to these close-in, Earth Oriented technical potentials of the use of space, there remain the unknown resources, strategic and material, of outer space and its possibly limitless potentials for the creation of new centers of human population and power. We have arrived historically at the brink of what may become a new and greater age of discovery.

All of these possible uses of space offer great potential material benefits to mankind, though their cultural and political effects are more uncertain and debatable. Even the more mundane and technical of them also obviously would require cooperative efforts between national states for their maximum effectiveness and peaceful achievement. Thus they provide the international community with new challenge and a new opportunity.

Hopefully, as far as the purely technical potentials of space are in question, there are many familiar examples of intergovernmental technical cooperative efforts in these very fields which have existed for extensive periods to deal with similar problems closer to Earth. One may mention the coordinating work of the World Meteorological Organization, the many cooperative agencies dealing with navigation facilities, the International Telecommunications Union (ITU) which now apportions the limited number of radio frequencies among the nations, UNESCO and other intergovernmental agencies and the formally non-governmental International Council of Scientific Unions and the arrangements of the International Geophysical Year (IGY), in the field of scientific cooperation. Indeed, the Radio Consultative Committee of ITU, meeting since August, 1959, has had presented to it by its technical Consultative Committee certain recommendations respecting the reservation of portions of the radio spectrum for the use of radio astronomers and for communications from and to the Earth and between space vehicles, already a pressing problem in view of reports of past interference by satellite transmissions with communications on Earth. Furthermore, satellite radios, if equipped with solar batteries without a cut-off mechanism might usurp a channel for hundreds of years.

But it is one principal intention of this paper to stress the fact that international technical cooperation of this type, though desirable where feasible, is insufficient. Even if expanded to accommodate appropriate space activities, it would leave many important questions, the most crucial questions, the political and strategic ones, unresolved. For technical, functional cooperation cannot assure that the activities of man in outer space and on the celestial bodies will be peaceful, no more so than it has provided much international security on Earth.

Proposals for the cooperative development of outer space must all be seen against a backdrop of political and security considerations. Even now, intercontinental ballistic missiles spend at least a brief period at distances up to 600 miles above the Earth. The exploding of nuclear devices at very high altitudes through use of rockets, as tested by the United States in 1958, not only might effect radiation levels around the world and create a general health menace but also interfered with radio and radar sets and established that similar effects might be anticipated along well-defined paths around the world. Thus a blast over the Indian Ocean might effect areas in western Russia, causing radio static which could interfere, according to an American official, "in principle with radar," It has been predicted that the time may soon come when advances in space technology will permit satellites to be used to jam attack-warning systems, to provide weather and other observations in advance of military movements on Earth, to be used as war bases and even to be armed with nuclear warheads, even perhaps launched secretly and maintained on distant orbits to be recalled as needed. This crucial aspect of the problem of man's entry into space, the control of non-peaceful uses of outer space, is obviously part of the broader problem of world peace and disarmament with which the world has wrestled for so long with growing need and without conspicuous success.

The fact that disarmament is in this sense a single overshadowing problem raises special difficulties in the regulation of space for peaceful purposes. Indeed the definition of "peaceful" remains, of necessity, inadequately specific and subject to

change with time. Furthermore, and most critically, the most peaceful uses of space may be suffused with military potentials. When this is so, the range of technical activities in which functional cooperation is even feasible, in the absence of an overall political settlement at least for outer space, is telescoped. To clarify the point, for example, satellites equipped to perform "peaceful" observations, necessary for napping, meteorological and similar surveys will provide information inevitably useful for military purposes when they report what they "see" to the national state which launched them. Or again, without inspection at the launching site, or a capture in space when that becomes feasible, it is not even possible to know that a satellite is in fact destined for a stated peaceful mission, perhaps in accordance with some international technical agreement, rather than some immediate or eventual warlike purpose. Without direct inspection, present techniques are simply inadequate for differentiating on the ground or during the powered phase between rockets used to launch peaceful satellites and inter-continental missiles. Furthermore, radar warning systems are probably destined to become less satisfactory, regardless of the launchers' intentions, due to the existence of substantial numbers of objects orbiting the Earth. And as we have mentioned, intentional jamming will also become a probable threat. All these conditions together significantly intensify the terrible possibility of an accidental but total war. Former Secretary of State Acheson has recently reported one such erroneous attack report which occurred while he was in office, even before the inter-continental missile became a reality. In a world of weapons which move increasingly rapidly and are increasingly deadly, so that literally only a few minutes may be available between detection and the possibility of partial protection and of retaliation, governments may not be able to afford the luxury of soul searching or authentication before reaction. The appearance of unidentified objects on a radar screen or, when it becomes possible, the fighting of a war in space, however "limited" such a war might be at its onset, represent major threats to national security and to international peace, as matters stand now. Short of a complete system of filing flight plans, backed by an actual inspection of payloads before launching or, alternatively, of a program of launchings solely under the direction and control of an international organization, the nerve-wracking military implications of almost any human penetration of outer space will increasingly become inescapable. Even with these, of course, information gained from satellites could have military as well as peaceful value.

The problem of assuring peaceful cooperative progress in space, then, turns out to be a veritable Gordian's knot, inextricably intertwined with highly sensitive military security issues. Apparently, it will be necessary either to achieve the millenium of a general settlement and disarmament on Earth, or, failing that, the only really fruitful alternative would appear to be to separate out effectively and remove from the exclusive purview of the Earth's antagonistic, competitive national states, all of the potentially military space activities, which means all space activities. For such a policy to have the faintest chance of success politically, even assuming a willingness to share the fruits of exploiting new frontiers internationally, a willingness which has been universally lacking in the past, the suggested program must in turn provide national states with the assurance than an agreement for peaceful, cooperative, supra-national exploitation and use of space will not prove detrimental to national security in the face of the fact that all satellites launched are potentially weapons of aggression. Thus, the satisfactory international organization and control of space penetration probably require as a minimum a still further scope to the area of effective international inspection systems to which soveriegn national states have thus far been unable to accommodate themselves.

It is interesting to observe, on a more hopeful note, that a converse may also be true. Space instrumentalities may soon provide a new and alternative inspection system. They may some day be capable of providing reliable international inspection for detection of nuclear explosions, massing of troops, and the like and hence may

serve as a part of a system for safeguarding peace. Science is also making detection increasingly easy.

In any event, the point that must be stressed here is that the military implications of the penetration of outer space can be ignored only out of naivite, blindness or political convenience. These dangers form the background for the consideration of the legal, political and administrative problems which follows, and they make half-hearted attempts at international control, of the type which has failed in the past, even less promising in the future. With this in mind, let us briefly examine each of these problem areas in turn.

Legal Problems

Perhaps the most basic problem which can be explored in jurisprudential terms is that of the legal status of outer space, though it is both clear and natural that the solution to this problem will be politically evolved and imposed. For the law for outer space remains to be made. Since the early days of aviation, it has been accepted that all states claim and exercise sovereignty in the airspace over their national territories, though the earlier claim of private landowners to ownership from "the center of the Earth to the Heavens above" has been substantially rejected today. National claims have been based on both security and economic considerations -- the desire to prevent sudden destruction from the skies and to build and protect national commercial airlines, both for profit and as a national security industry, a backstop to an air force. Man's penetration of outer space has only heightened such national security concerns.

The concept of extending a nation's territorial boundaries and hence sovereignty outward indefinitely has been much discussed and generally dismissed at least by commentators as a physical absurdity. Space itself is only a directional concept--as the Earth and the celestial bodies spin and move through space, projections from the Earth's surface would give a series of irregularly shaped cones with a constantly changing content. There is no constant relationship between particular areas on the Earth's surface, space or other celestial bodies moving through space.

Yet some legal extension upwards seems inevitable. There is as yet no international agreement as to the physical boundary of the universally acknowledged upward extent of national sovereignty in air space. It was unimportant that there be any arrangement until the day of rockets and satellites. Writers have suggested numerous methods for setting a boundary -- it might be set at the limit of the Earth's atmosphere which itself is variously defined in terms of gaseous content or aerodynamic lift, or in terms of one or more combinations of physical factors including velocity, gravitation, altitude, centrifugal force and the like, or even at some purely arbitrary height. On the other hand, a substantial group, including many government spokesmen, has suggested that it is both unnecessary and even dangerous from the point of view of future international accommodation and cooperation to set fixed limits at all -- that the applicable legal regime should be based on the activity undertaken. The lack of knowledge about the physical nature of space, it has been asserted, makes it unwise to do more than move forward on a pragmatic, case by case basis. And, as the Chief of Staff of the United States Air Force has said: "In discussing air and space, it should be recognized that there is no division, per se, between the two. For all practical purposes air and space merge, forming a continuous and indivisible field of operations." This could in its extreme be read to imply a limitless concept of national space, technologically defined, and hence forever changeable. This too has on occasion been suggested as desirable for national purposes.

If we can at least assume that there is a limit to the automatic extension of terrestrial sovereignties and that, at some time, practical international necessities will lead to the definition of that limit, we must still consider the status in law and practice of "outer space" and the celestial bodies. It is possible to

consider these as res nullius and hence open to appropriation by national states through traditional methods or by new arrangements more suitable to space. This concept would most probably lead to a direct extension outward of past scrambles and present national rivalries if accepted. At the other extreme, it has been urged that space and the planets be left permanently free for the perpetual use of all. Most commentators have, however, proposed a middle ground -- that space and the celestial bodies are not subject to appropriation or control by national states, but that this res omnium communis or res extra commercium must be subjected to some international arrangements to prevent misuse and danger and damage to other nations and persons.

In this regard, the flight "over" nations of satellites during the IGY to which no objections were raised, has lead several writers and spokesmen of small nations to suggest that a precedent has been set to the effect that space is free for the peaceful use by all. Of course, no state now appears to have the technological capacity to prevent such a flight. Nonetheless, United States spokesmen have, on occasion, also suggested that we may be here viewing "the initial stage of the development of a principle of customary international law permitting the orbiting of satellites" not equipped to inflict injury or damage. No consent has been asked nor prior warnings given of satellite launchings since the end of the IGY either and so far only the United States satellite equipped to scan the Earth itself has raised rumblings about "spy vehicles" from the Soviet bloc.

For other "rules" in space analogies to the "freedom of the seas" and from maritime and air law have often been suggested for application to outer space, but it has increasingly been recognized that the doctrine of freedom of the seas is itself of relatively recent origin and that it has become virtually meaningless in time of armed conflict. Further more the law of the seas is itself a "checkerboard of variegated regions and legal rules" and no mechanical extension of sea law or air law to space appears feasible or wise. There are, nonetheless, obviously useful examples of international cooperation to be found in international arrangements and practices concerning use of the seas and air space which are indicative of a balancing of the interests of the international community with the claims of states to protect their security, police and other interests through reasonable exercises of authority on the seas and in the air. The range of even peace-time, technical, --political problems which can be solved by analogy with the seas is limited however by the tremendously more rapid movement possible through space -- all action in outer space by other states is potentially military and presents a potential threat to the security of other nations at almost all times, a problem we have pointed to before.

Other legal problems of a less sweeping nature, and on which there is at least some consensus among United States and Soviet spokesmen and others, include the need to establish norms for assessing liability for damage caused by space vehicles and for the identification and the ascertainment of their nationality, for the reentry of space vehicles and for their return on falling. It may be pointed that assessment of damages might follow theories of strict liability as with other dangerous instrumentalities and might involve insurance or other guarantee features of the types used or proposed in connection with the development of atomic energy and for damage caused by aircraft to parties on the surface. If negligence or intent is required, the Anglo-American evidentiary rule of res ipsa loquitur might appropriately be adopted or a presumption of negligence might be included expressly. In any event, since governments will probably be the prime parties concerned as launchers for some time to come, the real problem, as United States spokesmen have pointed out, "is one of enforceability" both because it is difficult for injured parties to sue their own governments if at fault and, alternatively, there is the familiar problem of intergovernmental responsibility. It has been suggested that the International Court of Justice might play a role here but, in view of the well-established Soviet unwillingness to submit any question to an international judicial tribunal, two-nation mixed commissions to ascertain the facts might be a more work-

able device, unless and until a broader international regime is established.

Time forbids even this brief a discussion of more remote legal problems such as the provision of space navigation and similar codes, provision for certificates of qualification for space personnel, rules against contamination of space and, eventually perhaps, rules governing the carriage of passengers and goods, legal transactions in space, relations with humans on the celestial bodies and "relations with intelligent life ... on other planets or in other worlds."

It is perhaps misleading that, in deference to our title, law has been discussed before politics -- as was frequently pointed out in the United Nations discussions a year ago "in the last resort, the choice between various possible legal arrangements for outer space (will be) a political decision." Law needs a creator. The legal system will follow and reflect the general political settlement in space, or lack of a settlement. Without a general settlement, technical and legal problems will be solved, if at all, only when they are absolutely unavoidable and, in the usual manner, with each state acting as its own domestic and international politics dictate at the moment of international decision. Some reasons for feeling that this piecemeal approach is inadequate have already been suggested. Others will follow. But it is not easy to see what recommends such an approach to the creation of new international law where alternatives are available. It is true that the legal problems of space should be solved as they arise but this can surely be accomplished most effectively within an intelligently organized space regime. Thus, the common law, that most gradual and pragmatic of legal systems, developed within a reasonably adequate governmental framework, something that international law in general and "space" in particular now lack. Once an overall approach to the problems of outer space is decided on and the mechanism of solution is established, the more technical legal problems will succumb readily to solution in turn.

The Politics of Outer Space

Official and unofficial spokesmen for many governments have taken public positions on several of the important issues concerning outer space, both in and out of the halls of the United Nations, and one program of international cooperation in space activities has run its course. The politics of outer space already has a history which must be briefly sketched. Then it may be possible to look for trends and to evaluate their implications.

It is useful to remember that the space age was ushered in under the program of international scientific cooperation in many fields known as the International Geophysical Year (IGY) which ran from mid-1957 through 1958. That program was promoted by the nominally non-governmental International Council of Scientific Unions and was participated in by scientists from some sixty-six nations with active governmental backing and support. It was essentially a program involving coordination of nationally proposed and executed programs. Outer space was one of the fields of special interest within the program and both the Soviet Union and the United States announced satellite programs to be carried out under the IGY. As we all know, it was the Russians who made the first successful launching, Sputnik I, on October 4, 1957, scoring a tremendous international coup, thereby. All Russian and American launchings in 1957 and 1958, with the exception of the American SCORE communications satellite of December, 1958, appear to have been denominated as experiments for the IGY. No advance consent was asked of any state to the passage of a satellite over its territory and no objections were made to the movement overhead of any satellite included in the IGY program, nor, for that matter, subsequently.

While many examples of cooperative efforts in space activities can be found under the IGY, there were limitations from the outset as to the extent of cooperation achieved; for instance, no full agreement was ever reached on the amount or type of information to be supplied by launchers to the World Data Centers, a significant gap in a supposedly international research program. This appears to have been due pri-

marily to the fact that the Russians regarded the launchings as an integral part of their domestic military program and were simply unwilling to give away the primary data which might permit either estimates of military rocket capabilities or the deciphering of codes used for telemetering information from the satellites. The United States, nevertheless, has supplied much of the data obtained from its satellites, which has, in turn, led to at least some Congressional hints of disapproval.

Despite this not altogether unblighted record of scientific cooperation, negotiations were begun during the IGY in an effort to assure continued cooperation in scientific activities in outer space. This led in October 1958 to the formation of the Committee on Space Research (COSPAR). However, the details of this cooperation have not yet been fully worked out and, in the meantime, the IGY has ended. Recent satellites and space probes do not formally come under any international program therefor. Scientists from a limited number of interested nations engaged in launching rockets met to establish COSPAR programs in November, 1958 and March, 1959, but at the March meeting, Soviet scientists, the only Communist representatives participating, demanded revision of the proposed membership and, in April, 1959, the Soviet representative at the United Nations threatened a boycott of COSPAR unless Communist countries were accorded "parity", the first such purely political demand under IGY or post-IGY scientific programs. COSPAR's future remains under this cloud. Meanwhile, as we have pointed out, the IGY, the first limited international program for technical cooperation in space has in fact ended, after eighteen months of accomplishment, not entirely free, however, of national security problems, secrecy and cold-war maneuvering.

It is fitting to turn next to the official positions of the space powers themselves as these are reflected in the comments of political spokesmen. Authoritative comments of United States' officials date almost exclusively only from 1958 on. In general, despite broad, unspecific statements by the President urging a program for peaceful use now, to which we will return shortly, representatives of the State Department, the National Aeronautics and Space Agency, and the military services have tended to urge a cautious, national political policy. The suggestion has been for a case by case approach to the political as well as the legal problems of outer space without national claims being asserted but with a clear indication that United States activities to date are regarded as a sound basis for such claims if it seems appropriate to make any, as is the case with United States activities in the Antarctic. It has also been suggested that airspace, over which the United States most assuredly does claim sovereignty, might rationally be considered as extending as much as 10,000 miles above the surface of the Earth if it appears useful to do so and that no line should be drawn limiting a sovereign claim until "we have a great deal more knowledge." The United States has contended that certain principles of the Charter of the United Nations, at least as to the right of self-defense recognized in Article 51, and the Statute of the International Court of Justice are applicable to outer space even now. Some members of the House and Senate have urged more rapid action along the lines of international cooperation but both the United States and, as we shall see, the Soviet Union, are obviously moving with great caution, and both have avoided even the appearance of binding commitments to surrender any prerogatives won.

Official Soviet comments are much rarer, doubtless in part because the Soviet system does not provide officials with the same necessity for public testimony. In general, the Soviet Union, like the United States, has reserved its freedom of action with respect to claims in outer space. Soviet spokesmen and writers have urged that space be reserved for peaceful activities and, despite continued insistence on the absolute sanctity of airspace over the nation, this may be evidence of the possible acceptance of a different view for outer space. The concept of national sovereignty in outer space, for example, has been criticized by the Soviet author, Korovin, as "unscientific geocentrism, a return from Copernicus to Ptolemy." Universally accepted rules of international law - the protection of foreigners, the ban on

the use of force, intergovernmental responsibility, and prevention of piracy and unlawful acts - he has asserted, are even now applicable to cosmic space.

In addition, the closest approximation to an official statement of Soviet views is found in the draft resolution submitted to the First Committee of the General Assembly in 1958. In essence, that document proposed a "program for the peaceful use of cosmic space under international supervision" including an agreed international program for launching rockets for the study of cosmic space with research continued permanently on the same basis as in the IGY. A United Nations agency was also suggested to supervise the program, serving as a world information center and coordinating and aiding national research programs. How seriously the Soviet Union expected to pursue this international program we do not know since it was rejected by the western powers, a matter to which we will return.

While spokesmen for the United States and the Soviet Union have not thus far indicated an intention to make or to renounce the right to make claims to outer space, or to the celestial bodies, both nations have insisted that space be used for peaceful purposes only, though both are violating this principle regularly in practice unless convenient definitions of the extent of outer space are employed. Both, for example, continue to test ballistic missiles which spend at least some time at distances up to 600 miles from Earth. In addition, no agreement on the termination of high altitude nuclear testing has been reached as yet. Unless the testing of potentially lethal weapons is defined as a peaceful use, such tests are also contrary to the announced tenet.

Both nations have, at different times, been instrumental in bringing problems connected with the use of space to the United Nations. Some brief survey of these instances is also fitting. In the course of the disarmament negotiations in 1957, for example, the United States called the world's attention to the dangers inherent in the development of outer space weapons and offered to enter into any "reliable agreement" to "mutually control the outer space missile and satellite development." Efforts to achieve cooperation in disarmament were continued in the General Assembly and in the Disarmament Subcommittee and, in November, 1957, the Assembly adopted a resolution providing, among many other things, for a technical committee "to study the design of an inspection system...to assure that the sending of objects through outer space will be exclusively for peaceful and scientific purposes."

Meanwhile, on October 4, 1957, the Soviet Union electrified the world by placing Sputnik I in orbit. The space issue was given special political prominence again in a letter from President Eisenhower to Premier Bulganin on January 13, 1958 which is worthy of quotation:

> I propose that we agree that outer space should be used only for peaceful purposes. We face a decisive moment in history in relation to this matter. Both the Soviet Union and the United States are now using outer space for the testing of missiles designed for military purposes. The time to stop is now.
>
> I recall to you that a decade ago, when the United States had a monopoly of atomic weapons and of atomic experience, we offered to renounce the making of atomic weapons and to make the use of atomic energy an international asset for peaceful purposes only. If only that offer had been accepted by the Soviet Union, there would not now be the danger from nuclear weapons which you describe.
>
> The nations of the world face today another choice perhaps even more momentous than that of 1948. That relates to the use of outer space. Let us this time, and in time, make the right choice, the peaceful choice.

On January 16, 1958, Secretary of State Dulles again proposed the formation of an international commission to insure the use of outer space for peaceful purposes only. On January 31, 1958, the United States launched Explorer I, its first success-

ful satellite. On March 15, 1958, the Soviet Union proposed that the next session of the General Assembly consider "banning the use of cosmic space for military purposes, the elimination of foreign bases on the territories of other countries, and international cooperation in the study of cosmic space" through a United Nations agency. The link between outer space and "foreign bases" probably reflected the Soviet expectation of relying on long-range space-going missiles as counter-weights to United States bases within aerial striking distance of the Russian land mass. In September, the United States also proposed that the Assembly consider the question of a program for international cooperation in outer space activities and the First Committee discussed the matter in November, 1958. While the Soviet Union initially insisted on combining the question of bases with cooperation in space, it eventually gave way on this point and dropped the idea of the prompt creation of a United Nations agency as well. The western powers too made concessions and, in the end, proposed only the creation of an ad hoc study committee. This committee on the peaceful uses of outer space was to report to the Fourteenth General Assembly in 1959 on "the activities and resources of the United Nations, its specialized agencies, and of other international bodies relating to the peaceful uses of outer space; the area of international cooperation and programmes in the peaceful uses of outer space which could appropriately be undertaken under United Nations auspices to the benefit of (all) states...; the future United Nations organizational arrangements to facilitate international cooperation in this field; (and) the nature of legal problems which may arise..."

Even this very modest entrance of the United Nations onto the space scene was incapable of enlisting the support of both the space powers. Agreement on the membership of the study committee proved impossible of attainment, as the Soviet Union pursued its recent policy of insistence on "parity" in all arrangements and this the western powers would not yield. The western power's proposal was accepted by the First Committee and later, in December, 1958, by the General Assembly over Soviet bloc opposition and Arab-Asian bloc abstention. The Soviet Union, Poland and Czechoslovakia, which were named as members of the twenty nation ad hoc committee, announced at all times that they would not participate in its work and thus far they have not done so.

In the course of discussion at the United Nations, it became apparent that most representatives of non-space powers felt that there was no legal norms now governing occurrences in outer space but that national sovereignty should not be extended to outer space, they urged that space and the celestial bodies were "owned", or "belonged", or were the "common domain" or the "common property" of all nations or all peoples, and that space must be regarded as a res communis omnium or res extra commercium, rather than as res nullius, and hence was open to free use under international control. Representatives of the Soviet Union and the United States agreed to the need for peaceful exploitation, but in neither case was a position taken on the legal status of outer space which would in any sense prevent the making of unilateral claims to sovereignty or to national spheres of interest at some later date.

The Ad Hoc Committee met in May, 1959 after several delays, occasioned in part by the hope that the Soviet position would change. India and the United Arab Republic joined the three Soviet bloc members among the missing, apparently to avoid any implication of taking sides in the "cold war" -- though non-attendance certainly represented the adoption of a point of view. Work in the Committee was led by representatives of the United States, the sole space power present, as was to be expected. Legal and Technical Committees probed many matters connected with the penetration of space while carefully avoiding any action beyond the identification of problem areas in which the United Nations and other international organizations could be helpful. The Committee strove, in accordance with its view of its mandate, to avoid proposing solutions.

The Committee's Report, as evolved, expressed the feeling that international scientific cooperation was highly desirable since the exploration of space "was a

task vast enough to enlist the talents of scientists of all nations." For this, the use of voluntary arrangements of the IGY-COSPAR type was emphasized. As for space problem areas identified by the Committee, the allocation of radio frequencies for space activities was found to require immediate international attention. A listing of other matters recognized as requiring cooperative efforts soon is instructive - these included provision for determination of liability for injury or damage caused by space vehicles, perhaps through use of the International Court of Justice, registration and coordination of launchings (this apparently does not mean prior warning of launchings which the United States had announced earlier in another context it would not give), identification of origin of space vehicles through markings, call signs and orbit and transit characteristics, registration at a central point of these orbital elements, removal of spent satellites, termination of satellite radio transmissions, reentry, return of equipment, and avoidance of contamination both of outer space and of Earth on return. This is a not inconsiderable list of problems in itself. Further, other, more remote problems were said to include the determination of a line between air space and outer space, rules covering sovereignty, exploration, settlement and exploitation of celestial bodies and interference between space vehicles. This list includes problems which have already received considerable attention both from lawyers and diplomats even in the earlier United Nations discussions themselves.

It was suggested that at most a small center in the United Nations Secretariat, perhaps combined with a special General Assembly Committee was all that was needed to keep space cooperation alive and coordinated today, but the criteria for the composition of such a committee could not be agreed upon. It was generally agreed that there was no need yet for "an international agency for outer space," and the potential roles of existing cooperative international organizations were played up. There was generalized references to the applicability of the United Nations Charter and the Statute of the International Court to matters in outer space but there was agreement that too little was known to make it possible or desirable to formulate a comprehensive space code at present. The Committee, then, was studiously conservative in its approach to the prospective role of the United Nations with respect to outer space. The Swedish representative made it clear, however, that she feared that there might be an increasing gap between the great forward surge of space activities and the efforts of the United Nations to promote the use of space for the benefit of all mankind unless prompt action were taken within the United Nations.

The Ad Hoc Committee was obviously feeling its way cautiously which is understandable in view of the exotic nature of the problems it dealt with, the non-participation of the Soviet Union and several other sympathetic nations in its work, and the lack of an aggressively international approach on the part of the United States, the sole space power present. Factual and scientific studies could well proceed even without the Soviet bloc, and the propriety of the lukewarm United States approach is certainly open to debate. Nevertheless, at least for the present, it probably would be premature for the United States and others to abandon all hope of Soviet participation and to seek to reach an agreement on an outer space regime without the participation of the only other state which now has the capabilities of using outer space. And of course it would be unhealthy for the United Nations to set up another agency which would be impotent and would be ignored.

This is the current situation. It smacks familiarly of stalemate. Why is this still another stalemate? How dangerous and important is it? What can be done about it? We can only begin to sketch some rough speculative answers to these questions, and hope that others will be induced to follow up with serious and fruitful consideration of what are really momentous issues.

It takes at least two to make a stalemate. Our survey of space politics so far has revealed that the positions of the Soviet Union and of the United States, as revealed by their actions, are not in fact very different. The United States has been, it is true, more generous in sharing its scientific information; it has even offered, on a limited basis, the use of its satellites for the experiments of other states. But the predominant view, supported by many scientists, the military, the State Department, and many legal writers as well, calls for a cautious, independent space policy, with the United States Government reserving its freedom of action and its rights, and this view has been reflected in policy to date. Thus, in this there is only a pseudo stalemate -- we have instead a series of diplomatic delaying actions. Both space powers have been cautious in their own ways in the United Nations; neither wishes to yield its immediate advantages or to encumber itself with any serious international obligations and disciplines. On the other hand, it is possible and indeed likely that, when international technical cooperation in any field becomes essential even for the achievement of their short-run goals they will be able to arrive at some international accommodation of their immediate needs, except in those ever increasing cases in which national security is deemed to be affected.

Let us put aside for the moment the unyielding and admittedly important problem of bringing the Soviet Union to an effectively international space policy and examine the propriety, considering the needs of the United States, of our own space policy. Is the slow, gradual approach which emphasizes national freedom combined with international cooperation of a technical nature an adequate approach to the space age for the United States? We have already indicated repeatedly that we think not. It is obviously necessary, therefore, to recapitulate very crudely here the reasons for favoring a strongly international approach by the United States to the development of outer space.

As has already been suggested, technical cooperation, however beneficial, cannot provide for national security in space. It cannot assure that the activities of man in outer space and on the other celestial bodies will be restricted to peaceful uses. Indeed, they are not so restricted now. This, it is worth repeating, is a crucial omission. It is not pure hysteria to suggest that the combination of nuclear weapons of ever more devastating potential which are not subject to international control plus man's growing capacity to strike swiftly and perhaps by remote control by moving through outer space, which is also not subject to effective international control, present a threat both to national security and to human survival. For the combination of nuclear weapons and space potential is, if possible, more dangerous than either separately. Adequate control of both appears imperative. The effective control of either would reduce at least to some degree the dangers associated with uncontrolled development of the other. We have noted that it is impossible to distinguish on the ground or during the powered stage between a missile carrying a nuclear

warhead and a missile carrying a peaceful satellite unless there is an inspection prior to launching or a capture in space, when that becomes feasible. And without inspection, no doubt ways could be developed so that an apparently peaceful satellite, even one fully registered, could, after launching, turn out to be a menace. We have suggested that in the absence of an effective international regime for space, the danger of accidental war can be expected to grow directly with the increase in nuclear and space potentials, as more and more depends on each country's own rapid, accurate identification of missiles or satellites which may be picked up on radar screens and then, rightly or wrongly, taken to be the launching of a hostile attack against the people and territory of a rival state. Functional cooperation offers no assistance in the prevention of these and other already possible or soon to be possible uses of space for strategic or military purposes ranging from propaganda broadcasting, through surveillance and radar interference.

Functional cooperation also offers no solution to another set of problems which are, even on present timetables, not really remote -- those associated with clashes of interest over control of the celestial bodies when that becomes feasible. History gives us ample reason to believe that, unless forestalled internationally, national "security" considerations will inevitably be stretched to include the control of celestial resources. Functional cooperation offers no assistance in the elimination of the possibility of military clashes in space which may arise either in such "colonial" type struggles or, for other security reasons, when the capacity to intercept and search space vehicles is developed. However remote initially, such clashes would most likely spread and precipitate military action on Earth. Even if an effective international agreement provided that national sovereignties should not be extended into outer space in order to be exercised over heavenly bodies, thus eliminating or, more probably, deflecting national rivalries into new legal forms, when man develops the necessary capabilities, there will arise questions of occupation, use and exploitation of resources by human beings, whether or not in government service, the control of such persons, their comings and goings and mutual relationships. All of that would require a regime going far beyond the type of international functional coordination or even administration which was contemplated by the United Nations Ad Hoc Committee. We have not mentioned the variety of presumably even more remote problems which would arise for any administration from Earth if substantial populations should colonize the celestial bodies. Even the suggestion of a present international approach to these problems is likely to provoke scepticism and to appear premature as have similar suggestions on the threshold of previous scientific and technological innovations, but would not even the modest report of the U.N. Space Committee have been considered absurd or revolutionary ten years ago?

The line of functionalism -- its relative acceptability to sovereign States, the considerable achievements in limited but useful areas of international technical cooperation which have resulted from international technical arrangements -- should not blind us to its inherent limitations. Within these limitations, functionalism can be highly productive; it can never, however, be what it is sometimes apparently intended to be, a substitute for a workable political solution.

Those who would move slowly in the international politics of outer space do not, of course, suggest that there be a political vacuum there. They suggest that man's foreseeable needs might be met by a general rule that outer space be used only for peaceful purposes, combined with special limited technical cooperative arrangements for participation in "shareable" uses as they become known. But a self-denying rule by states to limit their space activities to "peaceful" pursuits and analogous commitments to permit free access or to keep celestial possessions or spheres of influence demilitarized when they become accessible and exploitable leaves open the usual questions of the definition of "peaceful," of inspection to ascertain whether actual use conforms to the agreed standard and of enforcement. It raises anew the ghosts of earlier experiments with colonial free access and with neutralized and demilitarized areas, as well as the unsatisfactory progress in the pursuit of atomic controls and the lethal competition in distrust we have been enduring for over a decade.

In short, in an international community which lacks both the capacity to separate neatly the peaceful uses of space for control by international technical agencies, and the institutions needed to guarantee national security in general it has been well said that "there is no good reason to suppose that man's normal potential for good or evil would in any way be altered by his advance into space or that national struggles for supremacy would not simply be projected onto the larger screen of the cosmos unless checked at the very outset" by an intelligent, comprehensive, equitable program of international controls.

In addition to these negative reasons, there are characteristics of the space problem which indicate both the utility and inherent feasibility of an immediate broad international solution. At the present time, for example, space activities are wholly in the hands of governments so that there is no problem of policing lawless individuals as has had to be done on Earth in the control of piracy or the trade in slaves, munitions or narcotics. Further, paradoxically enough, governments are not yet in fact physically capable of reaching out to occupy and thus to appropriate the Moon or Venus or Mars as in the history of Earth they have seized the Philippines, Madagascar or Ceylon. This is a great advantage and is not, as is sometimes asserted, a conclusive disadvantage. The threat rather is that these characteristics may and probably will change, and change rapidly.

Major international problems that linger do not always disappear. They often grow less soluble as national positions become inflexible -- vested interests grow and national pride is involved, even where "security" is only a fig leaf for rapacity. This is the uniform lesson of the past.*

It is a mistake to plead ignorance as an excuse for delay in space. We may lack knowledge of the physical details of man's extended environment. We have no excuse as political scientists for pleading ignorance of his capacity for good or evil in any political environment or of the better ways to promote the former and thwart the latter.

There really appears to be little leeway for choice. One alternative is to subject outer space and the celestial bodies to the same power struggle which has in history characterized the demarcation of national territories and spheres of influence on the map of the world with, perhaps, new, more sophisticated quasi-international formulas providing a smoke screen, and with the same recurring risk of resort to general warfare to settle problems which arise. The other alternative is to move boldly towards a strong international political solution for the development and control of space, "this time," in the words of President Eisenhower, in 1958, "... in time."

Having said all this, we must recognize that a call for workable international controls is neither an entirely new position nor one which can easily be put into practice in the light of what is often termed present international "political realities." Thus, before discussing some of the alternative forms which such an international solution could take, it is only fitting to bring up some of the practical problems likely to be associated with this approach.

We have already criticized the suggestions and hesitations of the gradualists and the functionalists and come to the conclusion that it would be in the long-run best interests of the people of the United States if their Government espoused a strongly internationalist regime for space, but we have assumed for this analysis that other nations, including the Soviet Union, were potentially cooperative. If this were not true, then it seems likely that military leaders as well as practical statesmen and politicians would feel impelled to advocate a national policy for the

*A recent and still pending example was recalled in a warning by the Australian representative in the United Nations First Committee in November, 1958: "Experience in Antarctica may suggest how difficult it may become to consider the problems of outer space impartially and on a universal plane if decision is left until states have established themselves permanently in the field."

United States in space even if they were otherwise convinced of the wisdom and utility of international development and control. There is one other group as well, the scientists, which has tended to support political conservatism in space. Their position need take the least space so it seems an appropriate place to begin.

The scientists' position appears to be based primarily on fears of bureaucratic interference -- they cherish their scientific independence and seek to be as free as possible from the interference, often scientifically ill-advised and always cramping, and the dictates of any government, their own included, and could not be expected to support a central controlling group for space. They favor programs of voluntary cooperation among scientists of different nationalities, devoted to the pursuit of knowledge of the mysteries of the universe. This is an understandable if somewhat politically naive vested interest position. In a world in which bureaucratic control and responsibility to society are inevitable features of democracy, complete scientific independence is impossible and undesirable from the social point of view. Scientific curiosity can yield brilliantly fruitful or grotesquely destructive results. For the long-run best interests of the scientists and the rest of us, science, like any other creative discipline, will have to accept its role as responsible servant, not master, of mankind in space. No doubt most scientists would agree.

That issue aside, the major question remains. If the Soviet Union is not in fact willing to yield up the prospective fruits of its own national assault on the conquest of outer space in order to participate in an international program, what can be done about it? To repeat, this is a hypothetical question. The position of the United States has not in fact been substantially different from that of the Soviet Union on this score. Furthermore, it is still possible that the Soviet position might change as they read the handwriting on the wall, or it might be induced to change by short-run international political considerations such as an aggressive pressure for an international solution on the part of the United States. But, making the assumption of initial Soviet recalcitrance, we must still ask ourselves what would the United States have to lose by taking the initiative internationally and offering its services as leader in the internationalization of space as it once did with the atom. In a field in which its capabilities are not only not unique but perhaps second best, it might thereby enlist the interest and scientific potentials of both the western world and also the "uncommitted" nations, not as mere minor participants in a U.S. program, but in a truly international program. Obviously, this would be a very refreshing change in a world accustomed to a more usual performance of the Soviet Union calling the diplomatic tune to which we all dance. Indeed, there have been increasing signs of restiveness with the now customary defensively-oriented United States diplomatic policy, which has tended to respond to each new threat to humanity with flexed muscles and the promise to equal or surpass the capacity of the Russians for destruction. Unfortunately, we probably must compete on these horrifying terms -- in the evil techniques of biological, nuclear and conventional destruction but that alone is surely nothing to cheer over, or to be cheered for. There is much to be said then for a revitalized policy, for pushing vigorously and creatively for more imaginative and hopeful solutions as well. This would be diplomatically intelligent, whatever the chances of success. But need it bring no further results?

If the United States pushed strongly for an international program could the U.S.S.R. afford to remain completely aloof, giving testimony to its selfish, warlike, "imperialist" designs in space? Let us assume for the moment that she neither joined nor succeeded in obstructing by threats of a preventive war the generous program of the United States to share and develope its advantages with the aid and for the benefi of the world community. And let us assume that the "uncommitted" nations would partic ipate -- whether this is possible depends on many things, not the least of which is how the program was presented to the world as well as what benefits, materially and in prestige, it promised. What would the United States lose then?

Undoubtedly it would be feared that, under such circumstances, we would be cramped by innumerable international inspections and obligations while the Soviet

Union was left unencumbered to use and abuse space. Some such concern is perhaps the most fundamental fear of internationalization by those concerned with national security and, particularly where obligations are not universal, it is not easily dismissed. Yet the assumptions implied by these fears are not altogether realistic either. In this case, it is assumed first that, despite its past declarations, and despite world opinion and the new space potential of the world community, the Soviet Union would use space for unapproved purposes. Second, it is assumed that, upon evidence of this fact, or even under threat of such a possibility, the international organization would prove inadequate to protect its participants either by insisting on and securing the termination of Soviet transgressions with respect to rules formulated by and agreed to by the rest of the world, or, if necessary, for defensive purposes, by emulating the Soviet actions themselves, the way we have felt forced to emulate them. This might be done by establishing international spy satellites or retalliatory international space stations, or, if the international organization became strong enough politically and militarily, even by setting up an international program of search and seizure of potential military space vehicles to meet the Soviet threat. After all, the rest of the world is, in fact, no more anxious to yield to Soviet threats or to accept Soviet delivered annihilation than we are. In their own spheres, they defend themselves aggressively -- even the Indian Government saw fit to take over Kerala. It is up to us to make them feel that outer space is their sphere of interest too. It is unlikely that the rest of the world would act very differently than would the United States in the face of any genuinely perceived threat from Soviet activities in space. And the responsibility, the burden and the onus of this terrible competition would be more effectively shared.

Of course it is obvious that an international organization capable of such activities would be very powerful indeed. To surrender power to so potentially powerful a body would be difficult for national states; but a less powerful organization would probably provide inadequate security for its members under our assumptions. It seems likely that the only alternative to a powerful organization, especially if the Soviet Union were unwilling to cooperate, would be a retreat to functional cooperation to which could be added a vigorous international space developmental program none the less. But all the frustrations and dangers of a unilateral pursuit of security would remain in space.

While we are being so highly speculative, let us return to another possibility already noted, the possibility of active Soviet resistance by threat of war against an unfriendly "anti-Soviet" alliance for space by the rest of the world, or such segments of it as would agree to a program of international control of the development of outerspace with or without the Soviet Union. War has become so potentially destructive that one can guess that, whatever the threats, the opportunity for "Preventive" war as a conscious choice is past. It is a good bet that the chances of accidental war, perhaps precisely because space activities are left uncontrolled, are greater than the chances of a consciously undertaken "preventive" war by any nations.

The world's current problems at the inception of the space age do not yield to clear-cut, obvious, simple, danger-free and pleasant solution. Risk is inevitable. Intelligence and taste in the assumption of risk is all we can hope for, and the risk to humanity from an extension of national rivalries into outer space is clearly formidable. Failure of the United States Government to move vigorously forward therefore with concrete proposals for an international regime for use and control of space must at least place an onus on officials of that Government to show that 1- they do not really prefer, shortsightedly, to leave room for national claims to enhance the short-run position of the United States without consideration of the interests of other nations and, consequently, the long-run interests of the United States; 2- that proposals for an international regime in space, honorably espoused, would inevitably weaken the national security of the United States, whatever their form, and whatever the safeguards that could be imposed; and 3- that there is insufficient advantage to the position of the United States on Earth to allow this

country to assume a position of leadership in the internationalization of outer space, rather than to continue to yield the initiative to the Soviet Union, a nation to which talk is cheap and which may, at any time, steal a march by talking internationalization, whatever its true intentions, while we continue to rely on uninspiring defensive national postures.

Administration in Outer Space

It should be obvious by now why the bulk of our attention has had to be allotted to the politics of outer space. It is the outcome of politics on Earth which will determine the legal and administrative structure for space. If the will is there, the not unchallenging technical problems of law and organization will yield to concerted effort.

Whatever we may say here, history indicates that any solution involving international administration is likely to be unwelcome and, indeed, to be rejected with little or no real consideration of its inherent merits or defects. It has almost invariably been automatically brushed aside by spokesmen for national states as "impractical" "unworkable" and historically unsound though a careful analysis of the few available precedents reveals exactly the opposite. And this has happened not only when the diplomat's state would have been called upon to give up some claim or acknowledged benefit but also when it was not mathematically certain that they would not be giving up some as yet unknown claim or benefit which might arise in the future, whatever the benefit to the world at large. In this too, it must be repeated, they have often ignored their own long-range interests.

We will not detail here the possible alternative national settlements for space if states reject all international solutions, either deliberately or through inability to agree on a substitute in a not unlikely sequence similar to the long drawn out disarmament negotiations. A variety of possibilities analogous to historically utilized prototypes exists for the administration of the moon and the planets and man-made satellites in such a circumstance, many of which have already been alluded to in passing. The celestial bodies could be left, like territorial spaces, to be acquired by the first state which developes the capacity to occupy or exploit them; or control could be shared in some form of condominium of capable states; they could be made subject to traditional self-enforced international international guarantees of fair treatment, free access and demilitarization, or they could be technically internationalized or at least recognized as not subject to a single state's sovereignty but none the less divided into well recognized, discrete spheres of influence. Undoubtedly, other patterns would also be thought of in an attempt to achieve national advantages if the necessity arises. We have already alluded also to the international political scramble not unlike past colonial scrambles that such a process of division of the resources of space would undoubtedly unleash. All this could occur, it is to be remembered, at the same time as international technical cooperation developed in the limited fields still felt by the competing powers to be a-political and non-sensitive from the security viewpoint.

If it somehow becomes politically possible to achieve something more than a strictly nationalist-functionalist approach to the problems of outer space, there are again many alternative patterns of international administration which exist, each with its own assets and drawbacks. A solution might well center in the United Nations system, but it need not do so. Or some totally new organization could be established outside the framework of the United Nations for the enactment of space codes when and as needed, the neutralization of space through control of the ownership, operation or licensing of all spacecraft, the provision for exploration, "government," and development of other spheres, and, in general, the advancement of the welfare of all men through activities in outer space. There are advantages and disadvantages of linking a new space organization with the established patterns of international cooperation and their established institutional limitations.

In any case, an international solution would as a minimum have to follow the

"basic rule" suggested by Secretary-General Hammerskjold in May, 1958, "that outer space, and the celestial bodies therein, are not considered as capable of appropriation by any state and that ... the overriding interest of the community of nations in the peaceful and beneficial use of outer space ..." be recognized. Added to this renunciation of potential sovereignty by national states would have to be some substitute for administration to fill the political vacuum thereby created. There would have to be, in other words, some assumption of responsibility for the maintenance of order by a general international organization. Volumes of analysis could be and perhaps would be written on the variety of forms such an administration could take and the respective merits of each. The alternatives could range from such weak international or quasi-international administration as the now familiar trusteeship pattern, with all its well known disadvantages, to direct international administration by an international civil service. It is quite possible to conceive of any number of hybrid forms between these two poles as well. We cannot go into the possible merits and drawbacks of each here, but historical experience indicates that there are few advantages and many international political problems implicit in any attempt to utilize a sovereign state, not matter how nominally circumscribed and responsible in theory, as the agent of the international community. Let us assume therefore some form of direct international administration by international civil servants and an international executive will be used.

Such direct international administration might also take any of a number of forms. It might provide for an international administrative branch with considerable centralized power, thus giving the secretariat great independence and responsibility, with the attendant problem of assuring democratic control by the legislature. Or it might, at the other extreme, reserve the bulk of continuing responsibility to some organ of the General Assembly (or some other appropriate legislative body) with little independence or initiative left to the executive secretariat. Again, it might call for a central administration with merely coordinating powers over a variety of functional-type technical and operating agencies. In this case, problems of coordination, efficiency and inter-agency jealousies might arise. In any event, it would be necessary to assure the "legislature's" responsibility to its membership and eventually to the peoples of the world and, even later, to the peoples of the solar system. Each of the many possible institutional forms would have advantages and difficulties; these are of course the familiar problems of designing direct international administration transferred into a few factual setting. Whatever the pattern of international administration, exploration and development might be handled through the creation of a Cosmic Development Corporation, reflecting the interests and contributions of all nations in its composition. Indeed, in the early period where no large populations were involved, such a company might even be used to provide governmental services in outlying areas as did the great trading companies of the age of discovery on Earth.

Just as the perfect national government has yet to be devised, there is no perfect solution to the international organization of space for the benefit of mankind. All that can be hoped is that the compromise selected is, in the light of historical experience, an intelligent one.

Time was when only crackpots and fanatics were predicting the imminent end of the world. Now the best people are doing it, and sheer political incompetence is the foreseen cause. The occasion for a fresh approach has arrived and, in so far as man remains a rational creature with a will to live and a belief in his own dignity, there is some room for optimism. The precise form or structure for the venture is not the important problem now. Through a long stretch of history, States have evolved a variety of devices for cooperative and administrative activities whenever a joint rather than a single-nation regime seemed desirable. The motivations have been as various as the forms-- political, economic, technical, ideological, humanitarian. In recent years, a still stronger motivation, human survival, has been added. The need and the incentive have never been greater than now -- indeed the choice must be faced and openly discussed -- controls now, or chaos later.

CASE STUDIES IN PRACTICAL POLITICS: THEIR USE AND ABUSE

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There is coming to be a very sharp dichotomy between the teaching activities of students of politics and their work as researchers. The liberal and humane roots of our discipline enjoin us to continue to expose students to the great issues which have confronted mankind through history and which are no less compelling today. Such an emphasis bids us to assist students to make discerning and discriminating choices among goals and the means employed to achieve them; they bid us to assist students in acquiring the skills of an educated man - the ability to read sympathetically and intelligently, to express his own thoughts clearly, and to make a part of his habits the activities of continuously acquiring and digesting information relevant to the problems he confronts in his private and civic capacities.

Our work in research bids us to explore meaning in political phenomena, and for this purpose to break down these phenomena into conceptual components, highly abstracted, simplified, and generalized. Much of this work - necessary and valuable though it is - can be presented to students only axiomatically, didactically. It may inform them, but in my judgment often does not assist them in realizing their own potential for informing themselves.

In case studies in politics there seems to be a way of effecting a marriage, a partial reconciliation of our duties as instructors and as students of politics.

Case studies in politics are excellent teaching tools and may, for that reason alone as Herb Kaufman has observed, justify the expenditure of time, energy, and money on their preparation. However, it may be well to attempt to spell out some of the virtues inherent in the use of cases in teaching politics.

Cases aspire to deal realistically with existential situations, to present political action with all the fidelity possible to human observers. But it is impossible to reproduce any complex human event with absolute fidelity. The cases remain, after all, to use Hans Morganthau's metaphor, paintings rather than photographs. Some of the best, it may be said, achieve the stark photographic clarity of a Goya; others, it must be admitted, resemble more the work of an Impressionist; still others, again extremely valuable cases, present an almost completely subjective picture of the events described. Even when the focus of the case is kept very narrow, it is impossible often to do more than suggest, as Duane Lockard has done in his case

in our series on the drafting of the Connecticut primary law,[1] the numerous other activities which absorb the attention, energy, and talent of the actors concerned with the primary legislation in Connecticut. Joseph Lyford[2], in our series, has told eloquently what it feels like to be an aspiring candidate. In the process he has exposed the motivations of a politician; namely, himself, as no other could have done.

Considered as teaching materials, case studies offer many advantages to the student. They take him where they find him, at the level of common sense and build upon his ordinary understanding of the actions of human beings, involve him in a story of considerable human interest, and present political problems as they are perceived by political actors and ordinary spectators. It is hoped the approach will do more than merely interest the student, though in practice it seems cases perform this function well. The cases encourage, indeed require, analysis of the situation, analysis of the motivation of the actors, analysis of the wisdom of their choices among the alternatives open to them, and finally, analysis of the relationship between political conduct and the core of values which the student as a member of our culture shares with others in greater or less degrees of intensity. By means of the material presented in cases, the student is given practice in penetrating the curtain of rationalization often drawn after the fact over the actions of politicians. He is exposed to and given training in discerning the difference between the ideal and the real. He learns again and again that the facts do not speak for themselves; that interpretation is required both by the actors and himself and that he, if he is to understand politics, must develop sufficient empathy for political activity to become himself an actor in a sense of reliving and understanding what is done on the political screen. Thus, it seems to me the study of cases will tighten the student's perceptions of politics, admonish him to be open-minded, to avoid simplistic explanations based on "good guys versus bad guys", to suspend judgment until the facts are in, to follow political events through time to their completion, and to make constant comparisons between the experience of today and the experience of yesterday.

Together, these exercises for the student encourage him to develop and round out his own scheme of values and give him a way of thinking consistently and systematically about politics and skills in the analysis of political events.[3]

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[1] Duane Lockard, Connecticut's Challenge Primary: A Study in Legislative Politics, Eagleton Foundation Case Studies in Practical Politics, New York: Henry Holt and Co., Inc., 1959

[2] Joseph P. Lyford, Candidate, Eagleton Foundation Case Studies in Practical Politics, New York: Henry Holt and Co., Inc., 1959

[3] Obviously, the bias about teaching implicit herein is akin to that expressed by Kenneth Culp Davis in "Reflections of a Law Professor on Instruction and Research in Public Administration", American Political Science Review, September 1953, Vol. XLVIII, No. 3, p. 732

The pedagogical advantages for the teacher are likewise numerous. The first, and perhaps most important, is the flexibility that cases afford the teacher in his approach to the subject. This flexibility is both procedural and substantive. Procedurally, the field is wide open for the use of teaching techniques which the teacher prefers or in which he feels especially adept. Two things only are inhibited or forbidden if one chooses to employ cases as teaching materials. The tendency or practice of inculcating the truth didactically is incompatible with use of the cases. Students themselves reading the cases and coming to their own understanding of them will not permit this practice if there is opportunity in the class for discussion of the cases. Neither can the cases very well be employed where the effort is made to require students to conquer material by rote memorization. There is no point in encouraging total recall of case materials; and it is a job which, I should hazard, can not be done by any one with a memory less facile than that of Harold Laski.

Substantively, the range of case materials now available and becoming available makes it possible to illuminate text materials or to dispense with a single text and organize a course around readings and illustrative cases. Under this point of flexibility, I would conclude by saying that the cases encourage the teacher to organize his own course rather than to become the mere transmitter of a text or slavishly to follow the chapter outline of a textbook without adaptation to his peculiar interests and the needs of his students.

In conveying political experience vicariously, cases may do as much for instructors as for students.[1] Not every college professor is assigned courses only in his specialty; many do not have practical experience in the fields they teach; cases can bring to the most worldly of us knowledge of situations beyond our personal experience.

The actual use of cases in the classroom seems to vary directly with the number of teachers using them.[2] Some teachers may prefer to concentrate on the substantive problems with which the case deals; thus, a possible use of Marvin Harder's case on the Wichita non-partisan election[3] in our series would

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[1] I am indebted for this suggestion to Ernest R. Bartley, University of Florida.

[2] See Edwin O. Stene, "Some Notes on Case Writing and Teaching", Philippine Journal of Public Administration, October 1957, Vol. I, No. 4, p. 341.

[3] Marvin A. Harder, Nonpartisan Election: A Political Illusion?, Eagleton Foundation Case Studies in Practical Politics, New York: Henry Holt and Co., Inc., 1958

be to employ the case as a taking off point for a discussion of non-partisanship in American politics. Others will prefer to use the cases in a close classroom discussion situation to develop skill and sophistication in reading, analysis, and expression. For these persons, the morals or lessons of the cases and their relationship to the broader generalizations contained in texts or in theoretical writings in politics may be secondary to the opportunity the case affords of working with the students more or less individually, assisting them and helping them to assist each other in developing greater strength in intellectual skills. Another teacher may prefer to encourage students to read cases for the purpose of acquiring practice, vicarious it is true, in thinking as the politician thinks or in thinking as the administrator thinks. Still, another may go at this goal by using the cases as the basis for role playing. The professor who is himself skilled in comparative analysis may, as the number and range of cases increases, employ the cases as the basis for training students in the comparative analysis of political situations according to the framework of analysis which the professor himself has developed or which he has adopted. The student of politics committed to the effort to systematize the study of politics, to make it more scientific, may require his students to formulate hypotheses on the basis of cases and thus to give them experience in the rigors of the scientific method.

Abuses in Teaching

In practice, I believe it is very difficult to use cases abusively in the classroom. The situations are so complex; the questions raised so varied; and the perceptions of students so diverse that the students themselves will break out of any mold in which one attempts to case the cases. Some practitioners, indeed, reject cases or use them sparingly for this reason. But the effort to treat the case materials as an absolute truth is a possible abuse. The case itself is always on trial, and it must persuade the students that it is an accurate, reasonably complete, and fair presentation of a situation. Similarly, the attempt to have students memorize the case or to narrow their insights into the case truncates the pedagogical potentiality of the case method of instruction. As I have indicated, it probably will not work.

Cases make almost imperative an opportunity for face-to-face confrontation of teacher and student in a class small enough to conduct a discussion. Probably there is more flexibility in class size than many of us would now grant. Some teachers, no doubt, can conduct meaningful discussions and command the attention of an entire class as large as seventy or a hundred by asking, probing, demanding questions of a handful of students in any given class hour. The others will participate silently, but nonetheless will follow that discussion and gain from it. It is far better, however, in my judgment to be able to elicit from each student his reactions to the case and his perceptions and analysis of it. Cases assigned to large lecture sections without expectation or opportunity for class discussion of the cases seem to me to lose the pedagogical advantages of cases

and to stand in competition with other available textual materials on merits of a different order from those under consideration here. There may be situations where cases, even in our own series, discuss political situations with greater insight, more clarity, and provide more information than the best text. As an example, I would point to Francis Carney's study of the Democratic clubs in California,[1] which appears to be the last and best word on the subject.

The major problem in the use of cases in teaching is that of unrelatedness - if one relies upon cases alone to present the materials in a given area of politics. Cases alone now seem to me inadequate to present the student with the details of governmental structure, with the historic trends which continue to influence today's events, and with the social and economic context in which the actors exist.

This criticism of cases was put forcibly by a member of our Case Advisory Committee with respect to the several of the cases in our series:

> I am very much impressed by the fact that none of the studies gives any recognition and none of the authors seem to recognize that they are describing a national trend. Is there something about the case method that tends to limit the factors we see in such a way that national trends become invisible, and what ought we to do about this tendency? The point is that local politics is never purely local, and it never has been less purely local than it is at the present time. To describe it as if the local communities exist in a sort of vacuum is fantastic. Maybe we need to insist on some comparative materials. Shouldn't we require the authors to compare developments in their own communities with developments in some other communities of about the same size and condition?
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> It seems to me also that the studies lack depth. (1) They lack historical depth. Current election statistics are apt to assume an entirely different significance if we compare them with pre-New Deal figures. It seems to me we ought to insist that comparisons be made with data from the 1920's. (2) It is also necessary to compare national, state, and local election figures. The political situation consists of the whole governmental apparatus at all levels, and any attempt to describe local politics without relating it to trends at state and national levels is likely to get us into trouble.

Within the confines of a single study, there seem to be no satisfying answers to these criticisms. To permit the author to describe a national trend on the basis of one case breaks the conception of the case and invites

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[1] Francis Carney, The Rise of the Democratic Clubs in California, Eagleton Foundation Case Studies in Practical Politics, New York: Henry Holt and Co., Inc., 1958

unwarranted generalization. The obligation to canvass all the relevant historical factors would place an intolerable burden on the writer and would again do violence to the case concept. In a single case, the author can be no more than suggestive of these factors.

Such defects of the method seem to require that the cases be related to text and other materials which present the general understanding of the area of politics in which the case falls. Used alone, and used skillfully, they may assist the student as no other materials do in building his own understanding of politics; but the method is laborious and time consuming, and other shortcuts must be employed to convey to the student the full range of information which it is often thought he should derive from a course in politics.

Cases in Research

I confess to have begun the administration of a case program with a distinct bias against the utility of cases in research, partly for the reasons explained above. It also seemed to me impossible to develop cases in sufficient quantities to make high level generalizations practicable or tenable. At the outset, then, I appreciated the force of Herbert Kaufman's criticism[1] of The Inter-University Case Program as having demonstrated again and again the complexity, delicacy, and ambiguity of public administration without following through on the numerous speculative hypotheses started up by the cases themselves, without systematically and rigorously attempting to structure and focus the production of cases so as to avoid undesirable duplication, to increase light, and to test existing generalizations.

On longer acquaintance, however, I have become convinced that cases play a necessary role in scientific research. The case study can perform the function of a reconnaissance of an area to be researched, to describe it minutely as it can be observed through the ordinary use of the senses. There seem to be four stages of scientific work: (1) observation; (2) formulation of hypotheses; (3) the design of experiments; (4) testing of hypotheses by experiment. Preparation of a case study seems to me to be analogous to the first stage - that of observation and reconnaissance in the field. The formulation of hypotheses and the process of designing experiments and testing the hypotheses by experiment flows naturally from the preparation of cases.

In time I have also grown less concerned about the problem of quantification of politics - developing cases in sufficient number to handle them statistically - at least in the present state of theory. I know that our

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[1] "The Next Step in Case Studies", Public Administration Review, Winter 1958, No. 1, p. 52.

president, Professor V. O. Key,[1] in his address to the Association last year, deplored proliferation of isolated studies; yet it seems to me these isolated studies play an important role in the complete and comprehensive work of research that is going on in our field. Cases seem to me to stand in relation to major systematic works in political science in about the relationship that now obtains between monographs in history and works of general and major importance in history.

At this point I should like to distinguish my personal position from the possibilities that I can see others developing from case studies. I believe with Vincent Ostrom that cases impose "no necessary anti-theoretical bias upon those who are inclined to pursue the meaning or significance of events described in the case narrative. If the cases are used simply as interesting narratives to give the students a 'feel' for administration (or politics), this is the instructor's choice."[2] Recently Richard Snyder and Glenn Paige have shown that it is possible to lavish attention upon a single case and to use that case as a testing ground for an analytic scheme.[3] Cases, likewise, it seems to me, are a necessary checkpoint and foil for the expanding use of survey questionnaire material. All such material proceeds on the assumption, psychologically questionable, that the questioners can overcome the almost universal tendency to rationalize, can safely ignore the familiar ideal-real distinction. Such techniques also assume that answers are dynamically equivalent to all other answers and that what can be counted can be handled as equivalents.[4] Cases, though they may not contribute directly to theory, may make an important contribution to theory by providing adequate checkpoints with reality beyond the experience of the theoretician or researcher. In other words, a case study may upset a theory even if it can not validate one.

At every time up to the present, there have been significant human experiences in the political realm that could not be duplicated experimentally by scientific method, but which were required to be understood or comprehended for human action. It is quite possible that the limits of progress in social science will not be reached for many years to come. When this point is reached, case studies may still be necessary in order to present to students

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1 "The State of the Discipline", American Political Science Review, December 1958, Vol. LII, No. 4, p. 961

2 "Some Reflections on the Use of Case Studies in Teaching and Research", a paper prepared for presentation at a discussion of the case method and The Inter-University Case Program in Public Administration, Western Political Science Association Meeting, Los Angeles, California, February 22, 1957

3 "The United States Decision to Resist Aggression in Korea: The Application of an Analytic Scheme", Administrative Science Quarterly, December 1958, Vol. 3, No. 3, p. 341

4 Thomas Rhys Williams, "A Critique of Some Assumptions of Social Survey Research", Public Opinion Quarterly, Spring 1959, Vol. XXIII, p. 55

the non-comparable, unclassifiable, unique aspects of life. As Vincent Ostrom has written, the case method "appears to be a productive research strategy for dealing with any complex system of phenomena using an abundance of information and having a large number of interesting variables. The wealth of information included in case reports facilitates the speculations of the scholar concerned with the meaning of the events being investigated."[1] Or, as I would put it, the case method is an excellent strategy for beginning a systematic study of chaos.

Finally, cases written around comparable events in a single area of politics may tell us all we can know as reliably as we can know it about many areas of politics. I would suspect, for example, that only by taking advantage of the experience of certain practitioners of the art of politics in our profession can we find out certain things about the non-public, non-observable operations of politicians.

There are several possible abuses of the case method in research. What are sometimes called cases appear to me to be desiccated abstractions from reality which do not present the student with political events in their full diversity and complexity. Such materials are usually shaped for a specific research or pedagogical purpose; that is, to make points or adorn theory. They impose on reality an avowed or tacit conceptual straitjacket which may or may not be more confining than what Richard Snyder calls "the prison of common sense."

The same danger is sometimes met when a case program attempts to have its cases written to prescription. At least in the beginning stages of the exploration of an area of political study through the case method, it seems preferable to do as was recently suggested in another connection - go south with a camera and wait; that is, to attempt to capture and record political events as they occur. The details desired can best be caught while the business is fresh or, better yet, occurring. Yet it is not always possible to foresee that a case in the making will disclose interaction of the variables selected for study, or illustrate the presumed relationships among people and institutions. Comparable cases can be developed in given areas by the slower method of collecting cases dealing with particular kinds of events over a period of time.

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[1] Vincent Ostrom, op.cit.

Always present is the temptation of premature generalization. The case writer frequently desires to combine what he learned from the experience of writing the case with his other knowledge to make statements that go beyond the case itself. Every case tends to become a book, and we all know books that are no more than case studies though they may be rounded off by an extravagant effort to impose meaning on the events described. But the case method, itself, provides a safeguard against vaulting domes of theory that overreach empirical supports.

Finally, if I may be pardoned a personal word, case studies seem valuable because they enable the study of politics to go on, perhaps to advance, in a world in which there is a distinct possibility that we live in a universe of special instances - unique, discrete, or at best randomly recurring. In research, a case study program permits us to have our cake and eat it. If this is, indeed, a world of special instances, a rigorous social science is impossible, and cases will help us know it. If, on the other hand, "the whole of reality is a system in which each detail, providentially and rationally, is subordinated to others and ultimately to the whole itself",[1] we have done no harm by investing in a case program, have not played a travesty upon the integrity of the researcher or consumer of his product, but have contributed to the formulation of theories which explain the world.

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[1] William Barrett, Irrational Man, New York: Doubleday & Co., Inc., 1958, p. 45

A paper to be delivered at the 55th Annual Meeting of the American
Political Science Association, Washington, D. C.
September 10-12, 1959

RECENT THINKING ABOUT STATE CONSTITUTIONS

John P. Wheeler, Jr.
Hollins College
and
John E. Bebout
Temporary State Commission on the
Revision and Simplification of the Constitution (New York)

Panel Chairman: John E. Bebout

Discussants: Victoria Schuck, Mt. Holyoke College
Guthrie S. Birkhead, Syracuse University
Robert H. Pealy, University of Michigan
John Vieg, Pomona College

This paper is based largely upon our experience of the past eighteen months with the State Constitutional Studies Project of the National Municipal League. Thus, it is wise to describe briefly the history and purpose of the Project.

The seed for the Project was planted in a coffee house in Fairbanks, Alaska, on a cold winter night in 1955. Three of the professional consultants to the Constitutional Convention -- John Bebout, Emil Sady and the late Kimbrough Owen -- were wishfully thinking how much simpler their tasks if certain kinds of materials on state constitutional issues were available, materials which could readily be placed in the hands of the delegates. Winter nights are long in Alaska providing time for the formulation of a rough outline of a project to be presented to some generous foundation. When plans ultimately matured three organizations jointly presented proposals to The Ford Foundation. The Legislative Drafting Research Fund of Columbia University proposed to do an up-to-date book on the legal aspects of constitutional change, to prepare a manual for constitution drafters, and to revise the Index Digest of State Constitutions prepared in 1915 in anticipation of the New York Constitutional Convention held that year. The Brookings Institution planned to prepare certain problem papers and to make case studies of the process of constitutional change. And the National Municipal League proposed to prepare and publish materials designed primarily for use by

citizen groups seeking to study constitutional problems and by those actually engaged in the process of constitutional revision. Grants from The Ford Foundation were forthcoming to finance parts of the League and Fund proposals. At the present time the Index Digest has been revised and is at the printers.

The National Municipal League in accepting its grant obligated itself to perform certain services to scholarship in the field, such as preparing bibliographies on state constitutions, facilitating communication and co-operation among students of state government, and identifying researchable problem areas, but the core of the State Constitutional Studies Project is the series of publications designed specifically to assist citizens engaged in the study and improvement of state constitutions. These publications fall into three categories: The first may be designated "citizen education." In this category are two monographs, tentatively entitled "Salient Issues of Constitutional Revision" and "The Future Role of the States." The former seeks to identify, analyze and offer possible solutions to the main constitutional problems facing the states today. In anticipation of this monograph fourteen political scientists and fiscal experts have prepared a series of background memoranda focusing on particular areas of constitutions problems.[1]

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[1] "The Constitutional Document as a Constitutional Problem," Robert B. Dishman, University of New Hampshire;
"Methods of Constitutional Change," Victoria Schuck, Mt. Holyoke College;
"State Constitutions and Civil Liberties," Robert S. Rankin, Duke University;
"The Office of Governor," Bennett M. Rich, Rutgers University;
"Administrative Integration," Ferrel Heady, University of Michigan;
"Reapportionment," Gordon E. Baker, Santa Barbara College;

These studies will be used in preparing the general monograph on "salient issues," in revising the Model State Constitution, and some will ultimately be published individually for the use of persons desiring to go more deeply into a particular problem than the general monograph provides.

The other monograph in this category, "The Future Role of the States," is a speculative effort to describe the role that the states (in the next two or three decades) may be expected to play in terms of their resources -- natural, fiscal and human, the demands which will be placed upon them, and the directions in which they are developing. This should suggest a more realistic framework than is usual within which considerations of constitutional change can take place.

The second category of publications consists of practical manuals to guide the administration of constitutional conventions and to assist citizen groups such as the League of Women Voters in undertaking analyses of particular state constitutions. The revision of the Model State Constitution falls into the third category.

A note about workways. Limitations of finance precluded original and

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[1] "The State Legislature: Structure and Procedure," Robert S. Babcock, formerly University of Vermont, now Lieutenant Governor of Vermont;
"Executive-Legislative Relations," Harvey Walker, Ohio State University;
"State Constitutions and the Judiciary," Shelden D. Elliott, New York University;
"The Initiative and the Referendum," Hugh A. Bone, University of Washington;
"Elections and the Franchise," Professor Bone;
"Local Government--Structure and Powers," Benjamin Baker, Rutgers University;
"Constitutional Home Rule," John P. Keith, Regional Plan Association;
Fiscal Provisions of State Constitutions," Paul Studenski, Commission on the Revision and Simplification of the Constitution (New York);
"State Constitutions and Intergovernmental Relations," Frederick L. Zimmerman, Hunter College, and Joint Legislative Committee on Interstate Cooperation (New York)

detailed research. Rather we have had to research the researchers and depend upon the opinions, impressions, and insights of those with experience in and understanding of state problems. Of course, we have reviewed as thoroughly as possible the available materials in the field; significantly helpful have been the studies of particular state constitutions. We have used both formal questionnaires[2] and informal correspondence to secure information and expressions of opinion. Interviews and seminars have been held at every opportunity. For example, we have interviewed delegates or staff members of the constitutional conventions held in New York, Missouri, New Jersey, Tennessee, and Alaska. Also, in the Spring of this year a series of four seminars were held -- one each in Washington and Cambridge and two at League headquarters in New York -- to which came professional students of government and representatives of functional groups such as the Conservation Foundation, the Committee for Economic Development, Better Schools, and the American Public Health Association. The seminars proved exceedingly provocative and provided the stimulus for this paper -- or at least raised some questions which have come to dog the Project.

This description of the Project and the workways has been necessary so that the comments that follow may be set in proper perspective with neither too much nor too little credence placed in them.

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[2]Our respondents did not constitute a cross-section of state populations. Most of them were academicians - professional political scientists. Some were heads of bureaus of public administration. A few were prominent members of the League of Women Voters. Several were lawyers. Thus the great majority could be expected to accept the party line concerning governmental reforms.

However, this description may have led to the assumption that the purpose of this paper is to present the findings and conclusions of the Project. Such is not the case. At the level at which we have been forced to work we have not as yet turned up new knowledge or fresh thinking that cries out for repetition before a professional audience. This paper will present briefly three of our "findings" but will consist mainly of raising some questions about the assumptions that underlie the Project and the classic prescriptions for reform and improvement of state governments.

The first finding: in reference to prescriptions for constitutional improvement critics and reformers show little interest in some of the more drastic and exotic devices which appealed to earlier generations. Today scant attention is paid to proportional representation and the unicameral legislature although they continue to be described in text-books and imbedded in the Model State Constitution. The initiative and the referendum remain firmly implanted in western and midwestern soil but show no signs of being transplanted to virgin ground. We found no one volunteering a preference for proportional representation -- except those who were doing so a generation ago. We found only five statements of concern with the unicameral legislature -- an important one being a dissent from the general report of the Pennsylvania Commission on Constitutional Revision.[3]

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[3]Commission on Constitutional Revision, Report (1959), p. 219. Richardson Dilworth, mayor of Philadelphia, and Jefferson B. Fordham, dean of the University of Pennsylvania Law School, as members of the commission added a dissenting statement to the report, which read in part: "In undertaking to vitalize the legislature and to render it equal to the responsibilities of its key policy-making and power distribution role, we need to make a fresh start. The unicameral or single-chamber form would be

Supporting this view Professor James Fesler reported to us that "none of regional and state assemblies that were offshoots of the American Assembly on state government problems advocated P.R. And unicameralism was specifically rejected by the Wyoming and Oklahoma assemblies, bicameralism was specifically assumed by the recommendations of the New Mexico, Illinois, and Vermont Assemblies, and the issue does not seem to have arisen clearly in the findings of the Southern, Pacific Northwest, and Massachusetts Assemblies. Yet," continues Professor Fesler, "these Assemblies had their share of 'good government' participants."[4] As Richard S. Childs is wont to say, "P. R. has a wonderful future -- behind it." Lest someone interpret these remarks to mean the National Municipal League is preparing to abandon its historical position, let us add, these remarks only summarize contemporary opinion and are not judgments on the merits of these devices nor necessarily an expression of hope abandoned that in the long-run they may achieve their place in the sun!

The second finding: with the exception of the more exotic devices cited above the prescriptions for reform at the state level most often advocated are the classic ones, those that have been popular for a half century. Over 95 per cent of the respondents to our questionnaire and practically

[3]structurally a fresh start of a dramatic character calculated to fix political and ins itutional responsibility and to make legislative processes more understandable to the people. The unicameral plan could be expected to add stature to membership. The operation of a bicameral legislature is diffuse and dilatory -- something we would find quite insupportable in local government or in business organization."

[4]Letter to author dated August 5, 1959.

all the studies of particular state constitutions cite reapportionment as a pressing need. Taking some liberty we may read into the comments the view that reapportionment lies at the heart of many problems confronting the states, that if only the legislative seats get fairly distributed among the people the other problems will get settled. Domination of the legislatures by the rural elements prohibits the states from taking their cue from the urban areas and thus showing the imagination and initiative needed for the states to play their rightful roles. The "decline" of the states is partly blamed on this unrepresentativeness since the urban populations turn from the hostile legislatures to the more sympathetic national government for help in solving their problems. The principle of one man one vote is dear to our hearts, but this great manifestation of faith in the imagination, morality and good sense of urban politicians and electorates is as disturbing as the older faith in control by the rustics.

Actually, this concern with reapportionment is probably stimulated more by reactions to the obvious violations of the principle of equal representation than by any firm belief that this is a cure-all for state ills. Among reformers state legislatures are still suspect and it is largely on the executive that they focus their hopes. The strong executive doctrine which has dominated the state reorganization movement since the turn of the century retains its popularity with reformers be they concerned with administration or politics.[5]

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[5] An interesting dissent from the South comes from Robert B. Highsaw: "...the result of executive integration in several southern states has been a chief executive often unrestrained by either the legislature or public opinion. Although this result means that the governor has the power to and often does promote integration of executive authority in line with general concepts of modern administration, it may also make

The diffusion of power and responsibility among many executive officers continues to be condemned, and the expansion of the governors' powers of appointment and removal continues to be recommended. From those states with short gubernatorial terms come demands to increase them and from those with one-term limitations come demands to raise or remove them. The Kestnbaum Commission joined in criticising generally the office of governor in the United States:

> Typically, though not universally, the governor is the nominal chief of a sprawling State administration consisting of scores of separate departments, commissions, and agencies. Department heads, many of them boards or commissions, are often selected or appointed for long or overlapping terms. This enables them to be more or less independent of rormal executive controls. Still other agency heads may be separately elected, or may be appointed by the legislature or by someone other than the governor. In most States, the governor's removal power over many of his 'subordinates' is so restricted that it is of little value as a tool of administrative control. Few governors have been supplied with modern staff agencies and tools of management adequate to the administrative responsibility presumed to be vested in them. Furthermore, constitutional limitations on tenure frequently weaken their leadership in policy and administration. More than one-third of our governors still have only 2-year terms, while of the 4-year governors, more than one-half may not succeed themselves. 6

On the legislative side little attention is paid to institutional problems concerning structure, organization or procedure, although there are many references to the constitutional restrictions upon the legislative power, particularly in area of finance. Henry Jones Ford's

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[5] for less rather than more administrative responsibility in the southern states. Public Administration Review, Winter 1959, p. 7.

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[6] The Commission on Intergovernmental Relations, Report, June 1955.

reference to the "manacled" state is still applicable.[7] Our judiciaries receive a great deal of criticism with the prescriptions for reform remaining appointment of judges, unification of the court system, and the destruction of the JPs. States are still plagued with the long ballot and with complicated requirements for voting, and we have still to work out a satisfactory system of home rule. But the point to emphasize is that the strong executive doctrine is still the core of most efforts at state improvement.

Third finding: there seems to be a growing sophistication about and the beginning of a new approach to "home rule" and state-local relations in general. This development is related to the rather sudden emergence in professional as well as public consciousness of the phenomena of galloping urbanization and sprawling metropolitanism. While the existence of "too many local governments, not enough local government"[8] has long constituted a challenge to political scientists and reformers, it is only recently that we have come to consider it a major state and even national problem. Seen in this context the issue of home rule is a great deal more complex than just the question of state meddling or local self-government which gave rise to the classic home rule doctrines and prescriptions. There is a widespread assumption among our professional colleagues that we need new institutional and legal constructs to accommodate the need for genuine local or community government and the interests of state and nation in the good order, well-being, efficiency and adaptability of urban America. So far we appear to have made some real progress in redefining and analyzing the problem

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7" Influence of State Politics in Expanding Federal Power," Proceedings of the American Political Science Association, 1909, pp. 53-63.

Commission on Intergovernmental Relations, Report (1955), p. 47.

assisted by some thoughtful exercises in model-building.[9] We still have made only a beginning in developing answers and no one yet knows how the answers when found can be worked into our constitutional and political system against the resistance of the short-run beneficiaries of the existing networks of local jurisdictions and jungle of state-local legal relationships.

Fourth finding: there is, as one might expect, increasing attention to the relation between politics and problems of form, structure and function in state government. Regrettably we must report that our excursions into this area have accomplished little more than to pile up additional testimony to support the increasing pessimism concerning the potentialities of our state political systems. Apathetic public concern, atrophied political organizations, the generally low visibility of state politics, and the lack of positive leadership stand out vividly in the majority of states. The contemporary scene is discouraging, the future dim, and we found no reason to disagree with Professor Key's statement that "the most limited investigation raises a serious doubt whether there ever were any good old days in state politics."[10]

Pessimism marks the responses to our inquiries and most of the studies which have been made of the constitutional problems of particular states. There is little hope and less expectation that the politics of our states will

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[9] Cf., the writings of Jefferson B. Fordham; and the recently published Arthur Maass (ed.), Area and Power: A Theory of Local Government, Glencoe, Illinois, 1959.

[10] V. O. Key, Jr., American State Politics: An Introduction, New York, 1956, p. 15.

or can generate the pressures which will force the changes deemed desirable. Nevertheless, there are still the experiences of Missouri and New Jersey and the more recent ones of Alaska and Hawaii which indicate that it is not entirely impossible to fashion new and better constitutional instruments in this age.

Fifth finding: in spite of the post-war discovery of the theretofore largely submerged continent of intergovernmental relations and the concomitant reclaiming of federalism as a major subject of inquiry and a possible object of planned improvement, we have turned up little fresh thinking on what all this might mean for state governments as such or for the strange and wonderful constitutional documents that are supposed to guide and guard their destinies. In general, we find little more than exhortations such as that of the Kestnbaum Commission warning the states that if they want to enhance, or even to preserve their supposed historic status, they had better put their constitutional houses in order and maintain more responsible, responsive and effective governments. The studies of politics, it is true, go somewhat beyond this. Some of them raise fundamental questions about the possibility of envisaging in many states at least the kind of state politics, within the framework of national politics, needed to sustain the self-starting, jet-propelled state government contemplated by the exhortations. There is considerable doubt about the capacity of many states to react sensitively to any problem because of their inability to present a sufficiently pluralistic political model. Few states provide electoral components in such diversity and range as to meet the requirements of, say, a Dahl model[11] of a democratic

[11] Cf., Robert A. Dahl, A Preface to Democratic Theory, Chicago, 1956.

state or to satisfy maxim three of Paul Ylvisaker's criteria for a "proper" areal division of power, which is: "The component areas should be constituted of a sufficient diversity of interests to ensure effective debate within each component and transcending communities of interest among the several components."[12] Theories in the past have emphasized homogeneity as a reason and basis for federal organization, but beyond a point homogeneity seems capable of destroying spontaneity.

There has been, in short, little attention to the evolving function of the states in our fast maturing federalism and the bearing of that function on what it is wise to expect or to try to achieve in the remodeling of state constitutions and governments.

So much then for our findings. Now for some questions that trouble us. These questions emerge largely out of the unsatisfying, inconclusive and somewhat inconsistent nature of the tentative findings we have been forced to set before you. As you proceed in preparing materials such as the Model State Constitution and in prescribing remedies for the ills of state government, you inevitably reach a point at which you begin to have qualms about the assumptions that underlie your work. These questions challenge the premises on the basis of which the classic prescriptions for constitutional improvement are offered, but neither I nor others associated with the Project accept these questions as self-answering. They are sufficiently troubling to cause us to pause in our efforts to improve state governments and to seek their answers from a wider audience.

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[12] "Some Criteria for a 'Proper' Areal Division of Governmental Powers," in Arthur Maass, op cit., p. 37.

An instructor's manual accompanying a standard American government text contains the following question to be posed to students: "Why has no state adopted in toto, or even most of, the model state constitution of The National Municipal League?" This question, of course, can only be answered conclusively and satisfactorily by freshmen; further study and sophistication will lead only to difficulty. Actually, the textbook authors give the students little help in answering this; they only point out that

> no state has adopted the model constitution in toto, or even considerable parts of it. The Alaskan constitution shows its impact at several points. Some of the improvements of the Missouri constitution may have been inspired by the model. The rapid spread of the legislative-council idea can be traced in part to the same source. Perhaps the model has provided some incentive in the state-executive reorganizations since 1930. The important thing is to have people feel that governmental institutions and instruments can be improved. [13]

The difficulties in framing a model constitution are those inherent in any efforts to study the states. The similarity in their institutional and constitutional structures and in their general cultural backgrounds leads to easy generalization about the practices and problems of the states. There are studies of the gubernatorial office, the legislature, courts, and all the other institutions of state government, and for over a decade systematic studies of state politics have been appearing. As noted above our Project commissioned the preparation of comparative studies in fifteen institutional and functional areas. Yet, the student of state government is constantly frustrated in his efforts to draw meaningful and satisfying conclusions, conclusions which can lead to specific recommendations for the improvement of

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[13] John H. Ferguson and Dean E. McHenry, The American System of Government, Fifth edition, New York, 1959, p. 613. Italics added.

specific situations. Robert Wood in his review of Coleman Ransone's The Office of Governor in the United States notes this problem:

> .....A full scale, tightly organized analysis undertaken by a competent, professional, well-versed in the techniques of our trade, fails in the end to identify the forces at work which make governors in one ecology act differently from those in another.[14]

That no two states are identical needs no documentation. The tangible differences between states in size, population, economy, history -- are obvious; perhaps less obvious but just as real are the differences in political vitality. Yet, despite staggering differences there is a remarkable similarity in the problems identified and in the prescriptions for their cure. Many of the same problems seen in Delaware are allegedly plaguing New York, a state with 50 times the population of the former. Mississippi and Illinois are criticized in the same vein, and generally the Dakotas receive about the same criticism as California. To cure the ills a common prescription is issued by the constitutional doctors. We cannot escape the suspicion that if the states so obviously differ from one another, the ills and the cures should differ. Have we become victims of a professional bias toward certain institutions and practices?

The fundamental question concerns whether our prescriptions for reform are determined by the function that the states play and may be expected to play in our system of federalism mature or are based upon professional and cultural biases that cause a conception of the states reflective of a

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[14] "The Perils of Popularity," Public Administration Review 1956, pp. 349-57.

political mythology better suited to federalism emergent. The organization of and distribution of powers within a political unit should be determined by the function of the unit. If this be accepted, it follows that a political unit whose function is to frame and execute policies in an independent or even semi-independent capacity may have quite different needs from one whose function is derived from a system in which the unit is fully integrated with others.

To our point -- is it realistic to think of the states as viable political entities with a quasi-independent role of their own? Within the context of modern "cooperative" or "integrated" federalism do state governments possess the political capacity to allow them to initiate and carry out important policies and programs of their own while assuring the maintenance of responsibility to the people? As pointed out above, much of the literature implies an affirmative answer, suggesting that by the removal of constitutional obstacles the states may once again assume their full role as policy-makers. The Kestnbaum Commission repeated Henry Jones Ford's criticism of fifty years ago insisting that "self-imposed constitutional limitations make it difficult for many States to perform all of the services their citizens require, and consequently have frequently been the underlying cause of State and municipal pleas for Federal assistance."[15] The American Assembly reached substantially the same conclusion:

> Some state governments are well geared to handle their responsibilities and have earned the confidence of their citizens; some have taken steps to qualify for confidence; but a large number are poorly prepared to meet the problems that press upon them.

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[15] Report, p. 37.

> Unless these latter states make substantial improvement, they will not win the confidence of their citizens, and in the natural course of events power will gravitate to other levels that meet more nearly the standards of democratic and competent government.[16]

A popular answer today to those who bemoan the "decline" of the states is that there has been no such decline but only a shift in position which gives the unsophisticated viewer the wrong perspective. The changes in the respective positions of nation and state within our federal system have been relative and not absolute; the great expansion of the national government simply overshadows the similar expansion at the state level. Witness the increase in the number of state employees. Count the new agencies. Witness the longer sessions of the legislature. And above all look at the budgets.

No one questions that the states are spending more, taxing more, borrowing more, hiring more and doing more than at any time in their history. No one disagrees that the national government has forced a great expansion of functional responsibility on the states and that all the traditional functions -- law enforcement, highways, health, and above all education -- have similarly increased. But these developments do not prove the capacity of the states to govern generally. The mere growth in governmental size and activity do not necessarily herald an increase in the political vitality of the state. Indeed, one might argue that the trends of cooperative federalism have instead bound the states more closely together in a "new set of realities"; instead of enhancing their policy position the states appear lost in the shuffle of an increasingly complicated web of government.[17]

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[16]The American Assembly, The Forty-Eight States: Their Tasks as Policy Makers and Administrators, New York, 1955, p. 138

[17]This point was stressed by a participant in the seminar discussion we sponsored on the campus of the Massachusetts Institute of Technology.

One test of the vitality of the states would be their creativity, since a traditional support for federalism is that the component units can serve as experimental laboratories. James Bryce wrote:

> Federalism enables a people to try experiments in legislation and administration which could not be safely tried in a large centralized country. A comparatively small commonwealth like an American state easily makes and unmakes its laws; mistakes are not serious, for they are soon corrected; other States profit by the experience of a law or a method which has worked well or ill in the State that has tried it.[18]

Textbook writers take their cue from this and include this among their underpinnings for federalism. One writes in part: "Federalism....encourages experimentation. The states can more safely change their constitutions and laws than can the central government. Forty-nine governments give us more latitude to try out new methods and to compare results..."[19] Another: "The states have a crucial role in pioneering new devices and functions of government. Within its constitutional field of action, each state is free to work out laws and administrative arrangements adapted to the rich variety of interests and areas in the United States."[20] But the lists of the actual contributions of the states are discouraging. One textbook cites North Dakota's experiment with hail insurance; another refers to experiments with the control of liquor. And a classic in the field reads: "Oregon can try the popular initiative and referendum; Arizona can experiment with the recall of judges; Nebraska can test the merits of a one-house legislature; Illinois can find

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[18]James Bryce, The American Commonwealth, Third Edition, New York, 1895, p. 353.

[19]James M. Burns and Jack W. Peltason, Government by the People,New York, 192, p. 132.

[20]Charles E. Merriam and Robert E. Merriam, The American Government: Democracy in Action, Boston, 1954, p. 96

out the advantages of a new plan of administrative consolidation."[21]

There is considerable doubt that the states have served well as experimenters. One text qualifies its statement by adding:

> The evidence suggests, however, that state and local governments have not always functioned satisfactorily as political laboratories. Despite efforts of such organizations as the Council of State Governments and professional associations of state and local governmental officials, the experience of one governmental unit is not usually transferred or made available to another unit. Indifference and hostility tend to characterize the attitude of states and cities toward each other, and the valuable experience of one government is rarely applied intelligently to another.[22]

Even if we were generously to concede the contributions of the states in the past, we need not concede for the present and future. Certainly this is a question for systematic inquiry. Two facets should be looked into: First, to what extent have the states served as experimenters with and creators of new functions, institutions and procedures? Second, if states have indeed served in these capacities which states have and under what circumstances? Perhaps it is not the state as such that can play this role but particular states at particular times possessing particular characteristics.

A moment ago we cited the problem of the differences between the states, a problem which is crucial for the Project with its plans to revise the Model State Constitution. If indeed the states vary so, can they not be expected to play different roles within our federal system? The truth is, of course,

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[21]Frederick A. Ogg and P. Orman Ray, Introduction to American Government, Ninth Edition, New York, 1948, p. 77.

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[22]Robert K. Carr, et. al, American Democracy in Theory and Practice, New York, 1957, p. 83

that they do. We think the magnitude and implications of this fact have not been given enough attention by scholars and reformers. Doubtless this failure is partly attributable to the historical dogma of the "coming together" of the thirteen original "sovereign" states, reinforced by the judicial doctrines of their legal equality. Fortunately, however, practical politicians are more prone to act on the facts of inequality, no matter how vehemently they invoke the myth of equality in oratorical appeals to local pride. The realism of politics in this respect is written into many acts of Congress, including annual appropriation acts, grant-in-aid formulas and stipulations, laws relating to the public domain and the public works programs. And the political inequality of the states is dramatically demonstrated every four years by the national party nominating conventions.

These observations raise at least two troublesome questions. The first has to do with the role of the states generally in our federal system, which in turn has a bearing on the essential governmental and political missions for which all the states should be structured and equipped. Without developing this question here, we suggest the following hypothesis: that the evolution of the federal system will be conditioned not so much by the capacities of the more competent as by those of the less competent states, and that when we talk of the "role of the states" generally, the "least common denominator" of state capacities is far more important than the potentialities of the relatively few that might come close to being able to exist as independent entities. This hypothesis rests in part on the assumption that with the increase in nationwide mobility and communication our society will tolerate less and less inequality in government service (including the enforcement

of standards of equal treatment for all citizens).

The second question is this: have we analyzed the data of state inequalities sufficiently to have valid opinions as to what if any bearing they have on different ways in which individual states or groups of states are or ought to be structured? This question is a set-up because the answer obviously is "no".

Both of these questions relate in turn to a very practical question the League's Project must answer soon: should there be one or more than one Model State Constitution? We note but pass over lightly a much more fundamental question namely: could or should there be more explicit recognition, perhaps even in the United States Constitution itself, of the inequality of the states? It is possible, in effect, to amend the state constitutions by amending the U. S. Constitution as has been done, for example, in the case of suffrage and in the area of civil rights. Federalism does not have to rest on a fiction of legal and governmental equality. Is it too far-fetched to envisage the possibility some day of an amended U. S. Constitution that explicitly recognizes and provides for different levels or degrees of self-government by the states?

If anything like this ever happens it will doubtless occur only after several more Kestnbaum Commissions, by the grace of semantics, high-grade promotional talent, and a liberal application of "sugar". "State inequality" can properly be translated as "state distinctiveness". An appeal might be made for the preservation of the integrity of variant state traditions by relating state responsibilities to the special genius of particular states or groups of states. Perhaps a constitutional gimmick could be worked out for

"optional" state charters in which different arrangements for balancing state and national functions, responsibilities and burdens might be offered. Well, maybe! Such a scheme could presumably allow to the highly competent and well-endowed states the maximum of self-government compatible with the national interest. The problem, of course, is to make it palatable to the other members of the union. Very likely, however, we will in the meantime approach more closely this state of affairs by our traditional methods of working around the constitution, without admitting openly what we are doing.

Different states, then, may be expected to play different roles, but which role will dominate the scene in the majority of states? This will be determined largely by the demands of the federal system. Except for the Joint Federal-State Action Committee and some third party advocates down in Richmond there is general acceptance today that our federalism is and can only be quite a different variety than that envisaged by Madison. Even the Commission on Intergovernmental Relations -- after the departure of Clarence Manion -- accepted this fact. Two years ago Morton Grodzins in a paper to this association drew an analogy from the bakery:

> .....The American federal system of government is not a layer cake at all. It is not three layers of government, separated by a sticky substance or anything else. Rather it is a marble cake, or what the British call a rainbow cake. No important activity of government in the United States is the exclusive province of one of the levels, not even what may be regarded as the most national of national functions such as foreign relations; not even the most local of local functions, such as police protection and park maintenance.[23]

More recently York Willbern pointed out that "the separation of governmental functions between the nation and the states is no longer a

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[23]"Key Factors in the Future of American Federalism," 1957, p. 3.

fundamental key to the American federal system" and that "very little remains of any exclusive concern by either national or state government in any governmental function."[24] He adds that "with few exceptions, the present areal division of powers in this country is one in which certain decisions with regard to all governmental functions are made at the state level and meshed with related decisions made at central and local levels." But he charges that "in spite of considerable attention to a changing federalism, the political science profession has not developed an adequate descriptive terminology for distinguishing the processes being performed by the nation, the states, and the local governmental units."

This failure has led the advocates of reform to define two and only two possible roles that the states may play. From the Commission on Intergovernmental Relations to the State Constitutional Studies Project, the propositions seem "either -- or". Either the states must be quasi-independent policy-initiators and administrators or they must become vestigial organs of a supposedly federal system whose national head has so monopolized power that the states are mere administrative agents at best. We question whether these are the only possible roles.

As our federal system matures the states indeed lose much of their independent status which our mythology tells us they once enjoyed, but is the end product necessarily complete subservience to Washington? An opportunity emerges -- indeed the states are already involved in a middle-man or mediating role in the process of negotiating with other units of our federal system and

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[24]"The States as Components in an Areal Division of Powers," in Arthur Maass, op. cit., p. 71. 73.

in coordinating the programs, activities and personnel that deliver an important proportion of the services of domestic government to the people. This role is both a policy-making and an administrative one. It involves participating in the actual development of policy prior to its enactment in national or in supplemental state statutes. It involves also some adaptation of policy to regional needs and conditions. On the executive or administrative side it offers the opportunity for some regional (i.e., state-level) coordination of related programs and adjustment of program emphasis.

Obviously if the states did not exist we should long since have had to develop some regional agencies upon which to devolve such responsibilities. Otherwise government in so vast a land would have bogged down in almost hopeless bureaucracy. We would never, of course, have set up fifty regional subgovernments marked off by the curious boundaries of our present states. But the fifty states we have, and it appears most unlikely that they can be replaced peacefully by fewer and better based regional governments. Should we not, therefore, have more research and more creative thinking on how to shape the constitutions and governments of the states for optimum performance on this "mediating" role in our ever changing federalism?

The thesis of this paper has been not that we should abandon the classic prescriptions for constitutional reform at the state level but rather that we reexamine them in the light of American federalism 1959-style. Insofar as political scientists and other reformers are able consciously to affect the development and structure of state government and politics, their objectives should be determined by the present and developing role of the state in our system and not by some out-moded conception of the state as a semi-sovereign

entity. It may well be that the classic prescriptions for the organization of responsible government are as appropriate to the states in the future as in the past, but we are not satisfied that the arguments for these principles of reform are any longer adequate; at least so far they have not convinced us sufficiently to reassure our nagging consciences.

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THE SINO-SOVIET ALLIANCE: HOW ENDURABLE?

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This paper will be delivered at the annual meeting of the American Political Science Association in Washington, D. C., September 10-12, 1959. It discusses various types of tension which might arise in the Sino-Soviet alliance over the next two decades from population pressures, prestige rivalry, and policy conflicts.

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A. Introduction

Many American observers of the Soviet scene have speculated of late on the possibility of eventual conflict between Russia and China.[1] Their conjecture embraces a variety of situations, ranging from actual armed clashes to disputes which render the alliance inoperative. Almost all agree on the basic unity of Sino-Soviet policies for the immediate future. As the alliance approaches the second half of its thirty-year tenure, however, divisive forces are seen to dominate its working relationships.[2]

These analyses generally focus on three sources of probable tension, namely population pressure, prestige rivalry, and policy disagreements. In brief, these tensions are depicted as follows. By 1980, China's population, projected from present trends, will outnumber that of the Soviet Union by four to one, with more than one billion persons compared with less than 275,000 across the border. This disparity will be even more striking in the Soviet Far East, remote from Moscow's control but close to Peking's power base in Manchuria. It is concluded that lebensraum needs will lead to Chinese colonization of Russian territories, if not to actual war.[3]

Prestige rivalry is seen as inherent in Russian-Chinese relationships with other communist regimes and with the uncommitted nations of Asia, the Middle East, and Africa. Not only

does the population disparity conjure up an image at variance with that presently formulated by Peking, which explicitly champions Moscow's leadership while implicitly accepting the modest role of junior partner. Chinese innovations in theory and practice, typified by the 1958 commune movement, are held to cast a shadow over Russian claims of socialist leadership which provides "the basic road" for all to follow in the construction of communism. Chinese impetuosity or impatience may combine with Russian jealousy or insecurity to rend asunder the alliance. At the least, prestige rivalry is held to decrease the willingness of each partner to compromise on matters affecting the third source of tension, conflicts of policy interest.

These policy conflicts are attributed to a fundamental divergency in the willingness of Peking to risk war as compared with Moscow. The relatively low level of economic development in China, together with the large population, appears to make the consequences of miscalculation and of general war less disruptive than for the Soviet Union. Further, it is argued that Moscow's constraints upon Peking's actions will decline in effectiveness as China becomes less dependent upon Russian material and technical assistance. In particular, China's eventual independence in the manufacture of nuclear weapons

may remove one of the most critical constraints which presently appears to limit China's freedom to differ with Russian policy and strategy.

The magnitude of these divisive forces is held to be so great as to overshadow cohesive aspects of the alliance, particularly since key factors which have thus far held the alliance together may decline in importance.[4] Space precludes our striking a comprehensive balance between the divisive and the cohesive forces in the Moscow-Peking axis. However, we can examine in more detail the obstacles confronting the alliance so as to offer a tentative estimate on its durability in terms of the attributed causes of dissolution, namely population pressure, prestige rivalry, and policy conflicts.

B. Population Pressure

Visitors to the Soviet Union seem to find ready expression at the "man in the street" level of concern over China's growing population.[5] At higher points of contact, however, evidence of anxiety in Sino-Soviet relations is understandably scanty and circumstantial.[6] An indirect approach, therefore, may permit a higher degree of confidence in calculating the degree to which present Soviet policy is shaped by considerations of Chinese territorial ambitions arising from population pressures.

One indicator lies in Soviet policies which may affect Chinese migration toward border regions. We do not know what confidential advice may have been tendered by Russian experts in China. We do know, however, that Moscow assisted Peking in constructing a railroad linking the Chinese capital with Ulan Ude in the Soviet Union, traversing the Mongolian People's Republic. Opening this line facilitated movement of Chinese into an area which had been an exclusive Russian sphere of influence for more than thirty years. At present, ten thousand Chinese laborers assist in Mongolian construction projects on two- or three-year rotation assignments.[7]

Less noticed but no less important in its future implications is the joint Sino-Soviet survey of the upper Hailunkiang, or Amur River, dividing Manchuria from the Amur oblast. Completed in February 1959, this survey selected sites for hydroelectric power stations, flood control, irrigation, and navigation improvements.[8] Neither the railroad nor this survey could have been undertaken without considerable Russian assistance if not actual Soviet initiative. Both serve to develop the Soviet Far East, but similarly both offer new possibilities for an increase of Chinese migration into the borderlands on a scale heretofore impossible. This suggests that recent Soviet policy has not been basically affected by apprehension over China's millions overrunning Russia's remote regions.

Nor is there objective cause for such apprehension. True, Manchuria, the most heavily populated Chinese area contiguous with the Soviet Union, has approximately forty-five million persons compared with less than seven million scattered through the Soviet Far Eastern provinces.[9] But there is little reason to believe that this signals a mass migration northward in pursuit of arable land. Even should cultivation of virgin lands in Manchuria, coupled with the proposed Heilunkiang development schemes, permit a doubling of the population there by 1980, the physical facts of life across the river seem unlikely to induce a spillover into Russian territory.[10]

Without going into details, the Soviet Far East is not a promising area for extensive agricultural development without capital investment and technological innovations, neither of which normally accompany mass migrations.[11] Above the fifty-fifth parallel, permafrost hampers construction of buildings and communication lines. Below this line, climatic conditions limit agricultural yields. Soviet techniques have overcome some obstacles, but the region still appears to be barely self-sufficient in foodstuffs. Population increase has centered in urban areas, reflecting industrial development based on exploitation of mineral resources. Thus its arable land is unlikely to attract Chinese colonization, any more than it has attracted Russian tillers to the Far East.

Even less attractive is the arduous route across the Gobi Desert into sparsely settled Outer Mongolia. Least of all is massive migration likely to traverse the fifteen hundred miles of mountains and arid plains separating populous North China from Soviet Central Asia. The single rail line, presently being completed with Soviet assistance, crossing Kansu and Sinkiang, will undoubtedly swell the population of northwest China. Unlike the northeast, however, this region does not offer promise for supporting more persons than reside across the border in the Kazakh, Kirghiz, and Tadzhik Republics.[12]

Furthermore, Peking has alternative approaches to its population problem. In the immediate future, increased agricultural output and continued industrialization may ease the imbalance between supply and demand of foodstuffs while expanding the productive employment of labor. The persistent use of insecticides and pest-extermination programs, chemical and natural fertilizers, improved seed strains, and modern planting techniques should increase yields markedly.[13] The commune permits a more rational allocation of manpower to all agricultural activities, from irrigation and land reclamation to harvesting and distribution. It may also control consumption of its members so as to maximize the amount of food available for urban areas.

Finally, by 1970 the accumulative impact of birth control may check population growth in China. It is true that Mao Tse-tung declared, "We have this large population. It is a good thing."[14] It is not true, however, as frequently asserted in the West, that the regime has reversed its 1953 decision to promulgate birth control measures throughout the country except for national-minority areas. No evidence has been found to indicate rescinding of the 1957 announcement officially approving abortion and sterilization.[15] On the contrary, last year municipal employees in Shanghai pledged to participate in planned parenthood while obscure quotations from Friedrich Engels were cited in support of "regulating the production of population."[16] Through the gradual spread of contraceptive practices, restrictions on early marriage, and supervised abortion and sterilization, China may stabilize its population during the 1970-1980 period while still leading the world with approximately 800 million inhabitants.[17]

C. Prestige and Policy Conflicts

Two other suggested sources of conflict are prestige rivalry and policy differences. Some observers believe prestige rivalry already to be gnawing at the bonds linking China and Russia, and anticipate this to be a growing divisive force.

They point to Peking's emphasis upon size and population in terms of measuring power, and to traditional Chinese conviction of superiority over all foreigners, including Russians.[18]

This approach has much to commend it. For all of Peking's insistence on Soviet bloc leadership, there is no reason to assume that Mao is without regard for his prestige vis-à-vis Khrushchev, or for his regime vis-à-vis that of Moscow. In terms of continuous, stable leadership as well as of collected writings which may be dubbed "theory," the Chinese elite is well ahead of its Soviet counterpart, at least at present. Whether it is so small a matter as the drafting of anniversary greetings or so large a question as the inclusion of participants at summit conferences, prestige considerations cannot but play a conscious part in the formulation of policy.[19]

In and of themselves, such considerations can hardly place a critical strain upon the alliance unless we assume some basic irrationality or compulsiveness to Russian or Chinese behavior. In conjunction with policy conflicts, however, prestige rivalry may gain added importance. The resolution of interest conflict is in large part determined by the willingness of each side to compromise. This willingness, in turn, may be critically affected by the degree to which each side is motivated by concern for prestige needs. Particularly in this era of rapid international

communication, the movements of communist figures and their shifting positions on issues permit ready inferences as to respective bargaining positions. These outside inferences reshape the world, if not the domestic postures of the two leaders. The summer of 1958, for instance, saw Khrushchev propose a summit conference on the Middle East crisis which would have included Nehru while excluding Mao. Khrushchev's sudden trip to Peking and his subsequent position aroused plausible speculation that matters of prestige as well as of policy had come to a head. For the moment, compromise resulted, despite the temporary loss of prestige which each leader suffered in turn. Another situation might find the same individuals, or their successors, interacting quite differently.

Because the two regimes place their primary foreign policy emphases in different portions of the world, major policy clashes seem seldom to arise. This does not lessen the importance of such clashes when they do occur, however. We have already suggested a possible divergence between Moscow and Peking on the degree to which war may be risked in pursuit of changing the status quo. Should this divergence exist and should it become intensified in their over-all approaches to policy, sharply conflicting strategies may emerge on particular problems. The Quemoy-Matsu crisis of 1958 may have been such a case in point.

In the event of a communist coup or "national liberation" struggle in such border countries as Iran, Afghanistan, or Laos, the partners may differ on the pattern of Sino-Soviet intervention because of their different estimates on the consequences in terms of U.S. response. At a less serious level, disagreement might arise over the advisability of accommodation with the West on such matters as nuclear test bans, control of outer space, and international disarmament proposals.

What impact are these disagreements likely to have upon the alliance? Certainly if one partner courted war with the United States, thereby involving the other partner against its express advice, the mutual assistance pledge would face its most severe test. Yet the Soviet response to a limited U.S. counterattack against a Chinese offensive in the Taiwan Strait, for instance, might vary considerably, depending upon a number of factors in the particular situation. In 1958 Khrushchev's first statements seemed to guarantee Soviet involvement in the event of shooting between U.S. and Chinese Communist forces in the strait. However, his later explanation of Moscow's responsibility raised some doubts in the minds of observers as to whether Russian obligations might not be redefined so as to avoid raising the risk of general war, even should this mean defeat for a local Chinese action.[20] Should such a situation develop with this particular outcome,

the alliance would not only suffer a setback but its subsequent deterrent force would be considerably reduced.

This is an extreme case whereby disunity would lead to defeat for one of the partners. More probable policy conflicts do not appear of similar magnitude. They are unlikely to dissolve the alliance, particularly when weighed against the mutuality of strategic, economic, and ideological interests which act as a counter-force binding Peking and Moscow. However, these disagreements may still play an important role in degrading the impact of the alliance by disrupting its co-ordination of strategy. To put it in Mao's terms, "non-antagonistic contradictions" may arise which prove incapable of resolution through "comradely discussion." The result may be to stalemate Sino-Soviet strategy, or at least to reduce its chances of success.

The impact of policy differences may vary considerably depending upon how they are communicated between the allies. The past five years indicate that extensive consultation at various levels, prior to implementation of joint policy, is the norm of Moscow-Peking relations. Does the fait accompli occur, and if so, what burden does it place on the alliance? We have already suggested that Khrushchev's proposal of Nehru for Middle East summit talks in 1958 may have come without prior consultation

with Mao. Unilateral action on the Chinese side may have resulted in military pressures along the disputed Indian and Burmese borders, offsetting Soviet blandishments toward these uncommitted countries.[21] One consequence of unilateral action may be to increase the demand for consultation on all possible points of difference. This can slow decisions and dilute strategy, as experienced among noncommunist allies.

Even within the framework of continuing consultation, differences of posture have suggested ongoing policy conflicts sometimes lasting for months. Until resolved such differences may carry important consequences. In the bloc crisis of 1956, for instance, the dominant policy of Peking varied from that of certain groups in Moscow. Both Mao Tse-tung and Chou En-lai appeared to buttress Gomulka's regime at a critical time when it faced important Russian pressures.[22] A second example of different postures arose in 1957-58, when Chinese statements struck a more consistently belligerent note than those emanating from Moscow, claiming that bloc superiority over the West had resulted from Soviet ICBM and earth satellite accomplishments. Exemplified by Mao's proclamation of "East Wind prevailing over West Wind" and his categorizing the United States as "a paper tiger," this more belligerent posture found Peking well in advance of Moscow in raising tension over Taiwan and the offshore islands in late 1958.

Two additional instances of possible friction are of particular interest because of their relevance for domestic affairs as differentiated from foreign policy. In 1956 Peking delayed public comment on de-Stalinization, and then issued an analysis at variance with that published in Moscow.[23] Since discussion turned around Stalin's domestic as well as foreign policies, the Chinese analysis may, unintentionally perhaps, have had repercussions in Soviet elite politics. Without passing judgment on the likelihood of various factional alignments conjectured to exist between Peking and Moscow, the logic of the situation indicates that Chinese reactions to developments within Russia and the bloc in 1956-57 could not have been without import for power struggles and shifts in Moscow.

In 1958 the reverse pattern occurred. Apparent Russian disagreement over the initial surge of communes in China may have arisen because of Peking's hint that communism could be attained in the near future through this radical restructuring of society whereby free services would eventually realize the goal, "from each according to his ability, to each according to his need."[24] Points of omission in Soviet public communications on Chinese developments, and less certain points of commission in private Soviet comment, indicated displeasure over Peking's policy.[25] As with de-Stalinization, "comradely advice" might

have been justified in order to clarify principle and practice for communist parties throughout the world. Even more than in the former case, however, this may have increased tension within the alliance because of its involvement with matters of domestic controversy.

These instances of possible or probable Sino-Soviet disagreement prompt several observations. First, only one of these cases, the Quemoy-Matsu crisis, was readily detected in advance by Western specialists. Khrushchev's secret speech against Stalin, the Hungarian revolt, and the commune movement came as complete surprises. The implications of the Polish Party crisis and of the Soutnik launchings for Sino-Soviet relations were not anticipated even by those who foresaw these events. This cautions us against undue optimism in our search for the future problems most likely to arouse tensions within the alliance. In addition to attempting anticipation of future points of conflict, we might also re-examine in detail the dynamics of past conflicts, thereby hopefully learning more of their inception and of their resolution.

A second observation on recent Sino-Soviet differences concerns the failure of ideological guidelines to answer specific policy problems. For instance, in 1956-57 Gomulka sanctioned decollectivization, solicited economic aid from the United States, and arrived at a modus vivendi with the Catholic Church in Poland. Yet this did not seem to lessen Chinese support for his program against certain pressures from Moscow. Conversely, selective quotation from Marx, Engels, and Lenin in support of the commune program in China did not assure approval in the Soviet Union. On the contrary, Khrushchev not only advanced implicit lines of criticism by quoting Lenin but elaborated new theoretical propositions markedly different in emphasis from those current in Peking.[26]

This leads us to a third point. The decline of doctrine as a guide to action permits greater flexibility of action, but threatens greater political uncertainty for bloc leaders. If Moscow and Peking disagree, what is to be the response of communists throughout the bloc, not to mention those throughout the world? In the 1956-57 crisis, different points of emphasis in the policies of East European regimes seemed to parallel differences manifested in the Russian and Chinese positions.[27]

In 1957-58 these cracks in communist unity were resurfaced with tributes to "Soviet leadership" and diatribes against "modern revisionism."

Yet it seems certain that bloc unity cannot be re-established on the enforced pattern of Stalin's time, nor is it guaranteed by more permissive practices of Stalin's successors. The phraseology "commonwealth of socialist states" does violence to reality insofar as it implies that relations within the bloc resemble those among former members of the British Empire. Only less a distortion of reality, however, are the noncommunist terms of "Soviet empire" and "satellite nations" insofar as they imply static relationships extending from 1949 to the present. It is here that the prestige rivalry of Peking and Moscow may exacerbate policy conflicts so that disagreement spills over from bilateral to multilateral discussions. Lesser members of the bloc may move between the two giants so as to curry favor, jockey for status, and perhaps negotiate alignments on the familiar pattern of Western politics.[28] To the degree that Sino-Soviet differences impinge on domestic policies and politics, as with the disputes over de-Stalinization, Gomulka's leadership, and the commune movement, this maneuvering is likely to increase in importance.

D. In Conclusion

In closing, a few points bear restatement. First, hope for dissolution of the Sino-Soviet alliance seems misplaced. Chinese land hunger does not pose a serious threat, objectively, to the Soviet Union. Perhaps, in Harold Isaacs' phrase, Western concentration on this issue speaks more of "scratches on our minds" than on those of the Soviet leadership.[29] Nor do policy conflicts, even if exacerbated by prestige rivalry, appear sufficiently sharp and irreconcilable to dissolve the alliance, particularly if considered against the partners' parallel policy interests. Talk of an allegedly "inevitable" Sino-Soviet schism may serve as intellectual aspirin to repress our policy headaches with both Moscow and Peking. Like aspirin, however, the repressant only postpones coping with the problem; it does not eliminate it.

Second, there is good reason to look for continued recurrence of disagreement and conflict within the alliance, sufficient for exploitation by Western policy. Success in this exploitation, however, requires an understanding of Sino-Soviet conflict and prudent policy adjustments. I have suggested that research in past instances of disagreement between Peking and Moscow facilitates such understanding. It may be objected that too many variables occur from one situation to another to permit the past to serve as a guide to future interaction between the two

allies. Yet granting the hazards in such projection, is this objection fundamental? Seven years of this interaction since Stalin's death suggest patterns of individual and group behavior and the interplay of personality and policy. In this time the elite composition in China has varied slightly. In the Soviet Union more changes have occurred, without, however, causing any serious break in the continuity of policy formation. Similar changes will occur in Peking as age and death remove the original leadership, yet similar continuity can be expected.

A more serious objection may be directed against inferring inner communist politics from open communist communications.[30] Yet the longer works of Rush, Garthoff, and Dinerstein on the Soviet scene, and Hinton on the Chinese side, show the potentialities as well as the difficulties of this approach.[31] As research on contemporary China slowly pulls abreast of that on the Soviet Union, we shall be able to make two-sided attacks on the problem of Sino-Soviet interaction. The results should show a significant gain over our present ad hoc approach to individual instances of disagreement which mixes newspaper reports of doubtful reliability, intuitive judgment, and primary sources in equal proportion.[32]

I hesitate to suggest that we may emerge with a "model" of interaction because of the inevitable distortions of meaning

which that term seems to arouse. Instead, let us aim for continual refinement of our hypotheses so that in succeeding instances we may modify and strengthen them to the benefit of analysis. Only as we gain confidence in our ability to advance such hypotheses can we improve policy formulation and implementation, so necessary if the West is to be an active rather than a passive force when disagreements weaken the Sino-Soviet alliance.

NOTES

1. See, for instance, comment by Senators Alexander Wiley and Hubert Humphrey in Disarmament and Foreign Policy: Hearings Before a Subcommittee of the Committee on Foreign Relations, U.S. Senate, 86th Congress, Part II, Washington, 1959, p. 225 and pp. 283-84; Robert C. North, "China: 'A Tiger By The Tail,'" The Reporter, March 5, 1959; Adlai E. Stevenson, Friends and Enemies, Harper and Brothers, New York, 1959, Chapter III; also comments on C.B.S. television program "Small World," February 22, 1959; Professor Hans J. Morgenthau, informal remarks before Institute of Current World Affairs, Pasadena, California, December 9, 1958; John Scott, "The Case For Two Chinas," The New Leader, October 6, 1958; The Washington Post, editorial comment, February 15, 1959.

2. According to the Treaty of Friendship, Alliance and Mutual Assistance Between The People's Republic of China and The Union of Soviet Socialist Republics, concluded February 14, 1950, "The present Treaty shall be valid for thirty years. If neither of the Contracting Parties gives notice a year before the expiration of this term of its intention to denounce the Treaty, it shall remain in force for another five years and shall be further extended in compliance with this provision." Text in The Sino-Soviet Treaty and Agreements, Foreign Languages Press, Peking, 1951.

3. For a penetrating critique of this theory, see John E. Tashjean, Where China Meets Russia: An Analysis of Dr. Starlinger's Theory, Central Asian Collectanea, No. 2, Washington, D. C., 1959. The population-pressure argument was advanced by Wilhelm Starlinger in Grenzen der Sowjetmacht im Spiegel einer West-Ostbegegnung hinter Palisaden von 1945-1954, Würzburg, Holzner Verlag, 1955, and Hinter Russland China, Würzburg, Marienburg-Verlag, 1957. Portions of the earlier book were translated in U.S. News and World Report, November 4, 1955. For some of the more extreme popular restatements, see John Scott, op. cit., and "Russia's Second Front," Newsweek, May 25, 1959.

4. A more detailed examination of these factors may be found in Allen S. Whiting, "'Contradictions' in the Moscow-Peking Axis," Journal of Politics, Vol. 20, No. 1, February 1958, pp. 17-61.

5. Robert C. North, op. cit., recounts several such instances, as have other travelers in personal conversations with the author.

6. Adlai Stevenson, op. cit., and in The New York Times, October 2, 1958, quotes unidentified "Soviet officials" on this point. Harry Schwartz, in The New York Times, April 5, 1959, asserts that Khrushchev privately expressed concern over Chinese population expansion to Chancellor Conrad Adenauer during the latter's visit to Moscow in 1955. Walter Lippmann, The Communist World and Ours, Little Brown and Company, Boston, 1958, pp. 26-27, quotes Khrushchev's negative reply to a direct question on China. No Soviet analyses of Chinese population problems has been found. The most extensive first-hand comment appears to be that of Khrushchev in his Leipzig speech of March 7, 1959. According to the delayed text published in Pravda, March 27, 1959, p. 2, he said, "In my talks with representatives of the capitalist world, I often had to answer the question: What do you think, Mr. Khrushchev, of the fast increase in the population of China? In reply I said it was true that the birth rate in China was very high. Its annual increase of population is about equal to the entire population of Czechoslovakia. (Animation in the hall.) My questioner then cautiously remarked: Does that not trouble you? There you have a typical sample of bourgeois psychology. Why should we be frightened by the rapid increase of the population in fraternal People's China or in any other country for that matter? If all the peoples apply their creative powers, their intellect, and their potentiality to expand the production of material and cultural values, there will be enough to meet the needs of the peoples of the whole world and the so-called 'question of overpopulation' of our planet will look absurd."

7. Robert A. Rupen, "Inside Outer Mongolia," Foreign Affairs, Vol. 37, No. 2, January 1959, p. 329. Earlier reports suggested the possibility of Mongolian citizenship being granted to Chinese resident for more than five years in the M.P.R., including those who so opted from among the 10,000 workers; Tashjean, op. cit., pp. 39-40.

8. New China News Agency (hereafter cited as NCNA), Harbin, February 14, 1959, in Survey of the China Mainland Press, No. 1960, February 25, 1959 (hereafter cited as SCMP).

9. Manchuria embraces the three provinces of Heilunkiang, Kirin, and Liaoning, as well as much of the Inner Mongolian Autonomous Region. The Soviet Far Eastern provinces include the Buryat-Mongolian Autonomous Republic, the Chita and Amur oblasts, Kharabarovsk district, the Coastal Region, and the Magadan, Kamchatka, and Sakhalin oblasts. The last three Soviet areas are not relevant to this discussion because of their distance from Chinese territory. Detailed studies of the areas involved may be found in Erich Thiel, The Soviet Far East, Frederick A. Praeger, New York, 1957, and Theodore Shabad, China's Changing Map, Praeger, New York, 1956. This population estimate is based upon these sources and preliminary reports of the 1959 Soviet census in The New York Times, May 11, 1959.

10. This doubling of the populace is predicated upon continuation of the present rate of approximate three per cent annual natural increase and an equal net increase through migration into the area.

11. Thiel, op. cit.; Shabad, op. cit.; and Tashjean, op. cit. These studies synthesize the available information up to 1958. It is possible that intensive Soviet investigation of this problem in the last five years has revised earlier estimates of potential agricultural development in the area and that appreciable gains in output will result during the next decade. For evidence of experiments which might lead to important technological breakthroughs in the Soviet Far East, see the speech by M. A. Lavrentiev at the 21st Party Congress, Pravda, February 1, 1959, translation in Current Digest of the Soviet Press, Vol. XI, No. 10, April 8, 1959 (hereafter cited as CDSP).

12. The New York Times, May 17, 1959, reports the 1959 census for Kazakhstan as 9.3 million persons. Sinkiang has slightly more than half this population.

13. Richard Moorsteen, "Economic Prospects for Communist China," World Politics, Vol. XI, No. 2, January 1959, pp. 192-221, discusses this problem in terms of comparative growth rates for the Soviet Union and Japan.

14. Mao Tse-tung, "On the Correct Handling of Contradictions Among the People," delivered before the Supreme State

Conference, February 27, 1956, and released by NCNA, June 18, 1956 "with changes and additions," in The New York Times, June 19, 1956.

15. NCNA, Peking, March 7, 1957, in SCMP, No. 1487. This report described the announcement concerning permissive abortion and sterilization as coming from Minister of Health Li Teh-chuan, "with the greatest reluctance." She said that without birth control China could not "free itself from poverty and become prosperous, rich and strong." For background on the announcement, including the history of birth control policy since 1953, see Jen Min Jih Pao, March 5, 1957, translated in SCMP, No. 1487.

16. For public pledges to practice contraception, see Shanghai Wen Hui Pao, January 23, 1958, in SCMP, No. 1721. The Engels quotation occurs in Shu Chung, "Chinese Population and Employment Problems," Jen Min Jih Pao, June 6, 1958, p. 7. Other articles asserting the need for birth control include Wang Cho, "The Way To Solve Population Problems in China," Jen Min Jih Pao, February 1, 1958, in SCMP, No. 1721, and Chou Pei-yuan, "Population, Production, and Birth Control," Bulletin of Atomic Scientists, Vol. XIV, No. 8, October 1958.

17. Detailed studies on various approaches to population limitation as experienced in Western, Middle Eastern, and Asian countries, as well as in the Soviet Union, appeared in Chinese publications during a more relaxed period of intellectual expression in early 1957. See Wu Ching-ch'ao, "A New Treatise on the Problem of China's Population," in Hsin Chien Shih, No. 3, March 3, 1957; in Extracts of China Mainland Magazines (hereafter cited as ECMM), No. 78; and Chen Ta, "Birth Control, Deferred Marriage and Population Problems in New China," ibid., May 1957. Estimates on future Chinese population totals are exceedingly hazardous if only because of the inadequate statistical basis for projection. For Chinese awareness of this problem, see Szu Kang-sheng, "Several Questions for Discussion and Study on the Statistics of China's Population," Tung Chi Kung Tsou, No. 5, March 14, 1957, in ECMM, No. 78.

18. Thus Mao Tse-tung, at the 1957 Moscow gathering commemorating the fortieth anniversary of the Bolshevik Revolution, spoke formally and informally on the relevance of population to

socialist superiority in strength; see his speech to the Supreme Soviet, November 6, 1957, as broadcast by NCNA, Peking, same date, and his remarks to Chinese students at Moscow University, Jen Min Jih Pao, November 20, 1957, in SCMP, No. 1662. By extension, his remarks could imply superiority in Chinese strength over that of the Soviet Union. For early evidence of Chinese resentment against Russian tutelage, see Allen S. Whiting, "Communist China and 'Big Brother,'" Far Eastern Survey, Vol. XXIV, No. 10, October 1955.

19. Compare, for instance, the Chinese Communist birthday greetings to Khrushchev with those sent by East German leaders, in CDSP, Vol. XI, No. 16, May 20, 1959. Peking's greetings become even more interesting when compared with Khrushchev's congratulations on Mao's sixty-fifth birthday in December 1958, hailing the Chinese leader as an "outstanding personality in the world communist movement," whereas the Mao-Liu-Chou wire termed Khrushchev an "outstanding leader and figure of the Communist Party of the Soviet Union and the Soviet state."

20. On September 7, 1958, Khrushchev dropped the qualification requiring assistance stipulated in the 1950 treaty "in the event of one of the High Contracting Parties being attacked by Japan or States allied with it," and said flatly, "An attack upon the People's Republic of China...is an attack upon the Soviet Union." See The New York Times, September 9, 1958. On September 19, 1958, Khrushchev reworded this so as to threaten nuclear retaliation against any country which attacked China with nuclear weapons; ibid., September 20, 1958. In apparent response to an October 1 press conference by President Eisenhower, however, where Khrushchev was depicted as raising the level of tension and furthering Chinese Communist aggression, the Soviet leader issued a statement through TASS. On October 6, 1958, Khrushchev's "interview" found him amplifying the earlier statements by pledging Soviet assistance "if the Chinese People's Republic is attacked from without, or more concretely, if the U.S.A. attacks the Chinese People's Republic." Text in Pravda, October 6, 1958, translated in CDSP, Vol. X, No. 40, November 12, 1958. Ma continued, stressing that the Taiwan Strait crisis was "a civil war" in which U.S. policy was one of "interference."

Some observers believed this to be an implicit retreat from his earlier, uncategorical warnings against U.S. action on the offshore islands. Certainly the casus belli remained somewhat in doubt. For instance, would U.S. armed escorts defending Chinese Nationalist shipping to the offshore islands have fired upon attacking Chinese Communist aircraft as "an attack against the Chinese People's Republic"?

21. For background, see Richard J. Kozicki, "The Sino-Burmese Frontier Problem," Far Eastern Survey, Vol. XXVI, No. 3, March 1957. During the Tibet revolt, Prime Minister Nehru informed the Indian parliament of alleged Chinese Communist incursions across the border at Bara Hoti in Uttar Pradesh and Taklakot near western Nepal; The New York Times, April 23, 1959. Less authoritative reports from Rangoon reported similar incidents intermittently during 1957 and 1958.

22. Flora Lewis, A Case History of Hope, Doubleday & Company, Inc., Garden City, New York, 1958, offers interesting accounts from unspecified Polish sources on discussions between Mao and Ochab at the Chinese Communist Party Eighth Congress, September 1956. For a review of other dispatches in The New York Times by Lewis and her husband, Sydney Gruson, together with comparison of Chinese and Soviet positions in 1956-57, see Whiting, "Contradictions in the Moscow-Peking Axis," op. cit.

23. Compare the Jen Min Jih Pao comment, "On Historical Experience concerning the Dictatorship of the Proletariat," April 5, 1956, in Current Background, No. 403, with the Resolution of the Central Committee of the C.P.S.U., "On Overcoming the Cult of the Individual and Its Consequences," Pravda, July 2, 1956, in CDSP, Vol. VIII, No. 24, July 25, 1956. Whereas Soviet emphasis was placed on the individualistic aberrations of Stalin, Chinese analysis stressed Stalin as manifesting "contradictions" in socialist society. Russian rejection of this analysis was signalled by Pravda's omission of portions of the Chinese editorial in its initial version, April 7, 1956; see Whiting, "'Contradictions' in the Moscow-Peking Axis," op. cit., pp. 145-46.

24. The phrase occurs in "Resolution on the Establishment of People's Communes in the Rural Areas," Central Committee of the Chinese Communist Party, August 29, 1958, in

Peking Review, Vol. I, No. 29, September 16, 1958, pp. 21-23. Despite the Jen Min Jih Pao editorial, September 4, 1958, cautioning against immediate application of the principle, authoritative journals and even key figures such as Liu Shao-ch'i called attention to the benefits of free food, clothing, shelter, nurseries, and medical services afforded by model communes.

25. Soviet comment ignored the communes throughout the fall of 1958, most pointedly perhaps in Ambassador to China Pavel Yudin's speech of November 7 in Peking. This contrasted markedly with the volume and content of publicity given the movement in China. Hubert H. Humphrey, "My Marathon Talk with Russia's Boss," Life, Vol, 46, No. 2, January 12, 1959, claims that Khrushchev on December 2, 1958, criticized the communes as "old-fashioned, reactionary," stressing instead reliance on incentives. Richard Lowenthal, "Khrushchev's 'Flexible Communism,'" Commentary, Vol. 27, No. 4, April 1959, analyzes Khrushchev's seven-year plan proposals as tacit criticism of the theoretical basis for the communes. Following publication of Peking's revised theses, "Resolution On Some Questions Concerning the People's Communes," December 10, 1958, in Peking Review, Vol. 1, No. 43, December 23, 1958, Anastas Mikoyan was reported as having made criticisms while on tour in the U.S. which paralleled those Humphrey reported from Khrushchev.

26. The December 10, 1958, C.C.P. resolution called for organizing agricultural labor on the lines of "an industrial army," and subsequent articles, such as Tung Ta-lin, "A Socialist Industrial Army for Agriculture," Peking Review, Vol. II, No. 3, January 20, 1959, cited The Communist Manifesto and Das Capital for support of this concept. This formulation appears to have been out of favor in the Soviet Union since the ouster of Trotsky. Khrushchev's extensive comments on agriculture at the 21st Congress and his analysis of overall economic development in the transition to communism implicitly differed with the Chinese approach on this as on other points.

27. See the symposium in Journal of Politics, Vol. XX, No. 1, February 1958, with articles on East German, Polish, Hungarian, and Czech developments during and after the crisis.

28. At the fortieth anniversary celebrations commemorating the Bolshevik Revolution, November 1957, some of this activity may have occurred among the East German, Polish, and Yugoslav delegations. See an interesting account by Richard Lowenthal, "Tito's Affair with Khrushchev," The New Leader, October 6, 1958.

29. Harold Isaacs, Scratches On Our Minds: American Images of China and India, John Day, New York, 1958. Although "the yellow peril" might be dismissed as archaic, the image of "human sea" tactics in the Korean War evoked similar reactions among distant viewers of that struggle.

30. For a cogent critique of this and other approaches to research on communist politics, see Daniel Bell, "Ten Theories In Search of Reality: The Prediction of Soviet Behavior in the Social Sciences," World Politics, Vol. X, April 1958, pp. 327-65. As a defense of the method, see Myron Rush, "Talmudism and Soviet Politics," to be published in a forthcoming issue of World Politics.

31. Myron Rush, The Rise of Khrushchev, Public Affairs Press, Washington, D. C., 1958; Raymond L. Garthoff, Soviet Strategy In the Nuclear Age, Frederick A. Praeger, New York, 1958; Herbert S. Dinerstein, War and the Soviet Union, Frederick A. Praeger, New York, 1959; and Harold C. Hinton, "The 'Unprincipled Dispute' within the Chinese Communist Top Leadership," July 1955. Articles by Franz Michael, Roderick MacFarquhar, and others compensate somewhat for the lack of monographic studies on the Chinese side, but basic research in this area has much to accomplish to match the Soviet studies from research centers such as those at Harvard and Columbia Universities.

32. For an assessment of needs and suggested remedies for this problem, see Howard L. Boorman, "American Research on Communist China (Political Problems)," Soviet-Asian Relations Conference, Report No. 13, School of International Relations, University of Southern California, June 1959 (mimeo.).